



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 30, 2018

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2018-02022

Dear Mr. Kopp:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 693954 (ORR# W190300).

San Antonio Police Department (the "department") received a request for information pertaining to a specified incident.<sup>1</sup> The department states it will release some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176(a) reads as follows:

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<sup>1</sup>The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

*Id.* § 418.176(a). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.176 must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The department states the submitted automatic vehicle locator ("AVL") records are "collected, assembled, and maintained by the [department] for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity." The department further states the AVL records "ensure that the location of department officers is known at all times . . . through tracking of marked patrol units." The department also states the AVL "records reflect patterns of officer deployment and varying methods of response and associated response times in real-time." Upon review, we find the department has demonstrated the AVL records relate to its staffing requirements and tactical plan, and are maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, we agree the department must withhold the AVL records it has marked under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code.

Section 552.108(b) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no

pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531, at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The department asserts the remaining information consists of logs of criminal history checks on the Texas Law Enforcement Telecommunications System ("TLETS"). The department argues release of this information "could easily give a criminal sufficient warning to evade detection and/or prosecution[.]" Thus, the department represents release of the remaining information would interfere with law enforcement activities. However, upon review, we note the information at issue does not consist of a log, but rather a driver's license inquiry, a license plate inquiry, and a warrant check by the police pertaining to individuals involved in the specified incident. Therefore, we find the department has not demonstrated the release of any of this information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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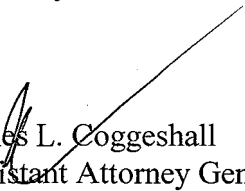
<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

In summary, the department must withhold the AVL records it has marked under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 693954

Enc. Submitted documents

c: Requestor  
(w/o enclosures)