



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2019

Ms. Jennifer Smith
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2019-01749

Dear Ms. Smith:

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# 746991 (File No. 2018-0169-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for information pertaining to specified equipment purchased using funds from Operation Stonegarden ("OPSG"). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state you notified United States Customs and Border Protection ("CBP") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from CBP. We have considered the submitted arguments and reviewed the submitted information.

We first address CBP and the sheriff's office's arguments under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open

Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) 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.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The sheriff's office states the submitted information relates to “internal tactical procedures, the chain of command/control/communication and the list of all operations participants.” The sheriff's office further states release of the submitted information would allow “private citizens to become aware of the specific time frames to commit crimes in order to avoid detection,” which would “permit private citizens to anticipate weaknesses in the [s]heriff's [o]ffice[s] law enforcement efforts, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” CBP states release of the submitted information would “reveal law enforcement strategy and permit individuals to circumvent the law[,]” thus allowing “traffickers, terrorist[s], and other criminals to identify vulnerabilities and avoid detection.” Based on these representations and our review of the submitted information, we agree the release of most of the information at issue, which we marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find both the sheriff's office and CBP failed to demonstrate any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Next, we address the sheriff's office and CBP's arguments under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. 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. Section 552.101 encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.176(a) provides, in part:

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:

...

(2) relates to a tactical plan of the [emergency response] provider[.]

Id. § 418.176(a)(2). The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under one of the confidentiality provisions of the HSA must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Upon review, we find the sheriff’s office and CBP both failed to establish the remaining information relates to a tactical plan maintained by the sheriff’s office for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

In summary, the sheriff’s office may withhold the information we marked under section 552.108(b)(1) of the Government Code. The sheriff’s office 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, 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,

A handwritten signature in black ink, appearing to read "Patrick P. Mehaffy". The signature is written in a cursive style with a large initial "P".

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 746991

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)