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ATTORNEY GENERAL OF TEXAS

June 5, 2019

Ms. Lee I. Correa
Counsel for County of Van Zandt
Flowers & Davis, P. L. L. C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701

OR2019-14885

Dear Mr. Correa:

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# 767152 (Request ID Nos. 66080006 & 66080008).

The Van Zandt County Sheriff's Department (the "sheriff's department"), which you represent, received two requests from the same requestor for information pertaining to specified incidents. You state the sheriff's department does not maintain information responsive to a portion of the request.¹ You claim you are not required to release the submitted information pursuant to section 552.028 of the Government Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part the following:

(a) A governmental body is not required to accept or comply with a request for information from:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(1) an individual who is imprisoned or confined in a correctional facility[.]

...

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028(a)(1), (c). The sheriff's department states the requestor is an agent of an incarcerated individual. *See id.* § 552.028(c). However, upon review, we find the sheriff's department has not established the requestor is requesting information on behalf of an individual who is incarcerated at a "correctional facility" for purposes of section 552.028. Accordingly, we conclude section 552.028 of the Government Code does not permit the sheriff's department to decline to comply with this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.182(a) of the Government Code provides in relevant part, "information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential." *Id.* § 418.182(a). The fact that information may be related to a governmental body's security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The sheriff's department informs us the submitted information consists of surveillance camera video recordings of the jail. We understand the surveillance cameras at issue are part of the jail's security system. The sheriff's department states the surveillance camera footage identifies vulnerabilities in the surveillance system, including the camera locations and quality of the recordings. Additionally, the sheriff's department states the information at issue reveals the locations of doors and other security measures. Upon review, we find the submitted recordings relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the sheriff's department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.²

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/jxd

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 767152

Enc. Submitted documents

c: Requestor
(w/o enclosures)