



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 12, 2019

Ms. Jennifer Slack  
Assistant District Attorney  
Lubbock County  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2019-15754

Dear Ms. Slack:

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# 767722 (ORR.1349).

Lubbock County (the "county") received a request for all requests received under the Act during a specified period of time.<sup>1</sup> You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.132, and 552.152 of the Government Code. You also state you notified the Crime Victim Services Division of the Office of the Attorney General (the "OAG"); the Texas Medical Board (the "board"); the Texas Department of Licensing and Regulation; and the Texas Department of Family and Protective Services ("DFPS") of the request for information and of the 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

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<sup>1</sup>You state you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the county received the required deposit on March 12, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

you have not provided our office with any representation to indicate the department wishes to have the information at issue withheld. Accordingly, we find you have failed to demonstrate section 552.108(a)(1) is applicable to the information at issue, and the county may not withhold any of the remaining responsive information at issue under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor)*. This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g., Open Records Decision Nos. 531 (1989) (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., ORDs 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)*. Although you assert section 552.108(b)(1) for some of the remaining responsive information, upon review, we find you have failed to demonstrate the release of the information at issue would interfere with law enforcement or prosecution efforts. Accordingly, the city may not withhold any of the remaining responsive information under section 552.108(b)(1) 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 section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. The fact that information may relate to a governmental body's security concerns 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 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 statute, a governmental body asserting section 418.181 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).

Although you assert portions of the remaining responsive information are confidential under sections 418.176 and 418.181, we find you have failed to demonstrate the remaining responsive information at issue relates to staffing requirements or tactical methods of an emergency response provider, consists of a list or compilation of pager or telephone numbers of an emergency response provider, or identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See id.* § 421.001 (2) (defining "critical infrastructure" to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). Consequently, the information at issue is not confidential under section 418.176 or section 418.181 of the Government Code. Thus, the county may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 418.176 or 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including subchapter B of chapter 56 of the Code of Criminal Procedure, which is the Crime Victims' Compensation Act. Crim. Proc. Code art. 56.31. Article 56.65(b) provides:

(b) An application for compensation under this subchapter and any information, document, summary, or other record provided to or received, maintained, or created by the [OAG] under this subchapter is:

(1) except as provided by Section 552.132(c), Government Code, not subject to disclosure under Chapter 552 of that code; and

(2) except as provided by Subsection (c), not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release.

*Id.* art. 56.65(b). We note the information at issue consists of a request sent to the county by the OAG pursuant to article 56.38(d) of the Code of Criminal Procedure. *Id.* art. 56.38(d) (providing for release of law enforcement records to the OAG for purpose of determination





employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). Section 601.275 of the Occupations Code provides:

A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the advisory board, the [board], or an employee or agent of the [board] relating to a certificate holder, a person approved under Section 601.054 or 601.055, an application for certification or approval, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the advisory board, the [board], or an employee or agent of the advisory board or [board] involved in discipline under this chapter. For purposes of this section, "investigative information" includes information related to the identity of a person performing or supervising compliance monitoring for the advisory board or [board] and a report prepared by the person related to compliance monitoring.

*Id.* § 601.275. Sections 164.007(c) and 601.275 are applicable to investigatory records compiled by the board during an investigation of a license holder or a certificate holder, respectively. The board argues portions of the responsive information are included in investigations conducted by the board. By their own terms, sections 164.007(c) and 601.275 make information confidential when in the possession of the board, its employees, or agents. In this instance, however, the information at issue is in the possession of the county. Furthermore, the county is not acting as an employee or agent of the board in maintaining these records. Therefore, we conclude sections 164.007(c) and 601.275 do not make any portion of the remaining responsive information confidential in this instance. Consequently, the county may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 164.007 or section 601.275 of the Occupations Code.

In summary, the county may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 56.65(b) of the Code of Criminal Procedure. The county must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the additional e-mail addresses, a representative sample of which we have marked, under section 552.137, unless