



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2019

Mr. Carlos I. Hernandez
Counsel for the City of Dilley
Maldonado Law Group, P. L. L. C.
310 South Saint Mary's Street, Suite 1710
San Antonio, Texas 78205

OR2019-15929

Dear Mr. Hernandez:

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# 768078.

The City of Dilley (the "city"), which you represent, received a request for information pertaining to a specified audit. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The city received the request for information on March 11, 2019. You do not inform us the city was closed for any business days between March 11, 2019, and March 25, 2019. Accordingly, you were required to provide the information required by

¹We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the city pursuant to that request.

section 552.301(b) by March 25, 2019. Although you timely raised sections 552.101 and 552.117 of the Government Code, we note you did not raise section 552.108 of the Government Code until after the ten-business-day deadline passed. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to its claims under section 552.108.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). We will address your timely-raised claims under sections 552.101 and 552.117 of the Government Code. However, we find you have failed to establish a compelling reason to address your claim under section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses sections 418.176 through 418.182 of the Government Code were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant part:

(a) 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; [or]

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

Id. § 418.176(a)(1)-(2). Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of

persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain 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).

You assert portions of the submitted information relates to the staffing requirements of the city's emergency response providers or a tactical plan of the providers. Further, you assert portions of the submitted information relate to an assessment of the risk of vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Upon review, we find the city has demonstrated the information we marked is confidential under section 418.177 of the Government Code. Therefore, we agree the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Upon review, however, we find you failed to demonstrate the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider for purposes of section 418.176. Further, we find you failed to demonstrate the remaining information relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 or section 418.177 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find some of the submitted information, which we marked, may be subject to section 552.117(a)(2). We note the individuals whose information is at issue may be currently licensed peace officers as defined by article 2.12. Accordingly, to the extent the information we marked pertains to individuals who are currently licensed peace officers as defined by article 2.12, the city must withhold the information under section 552.117(a)(2) of the Government Code. Conversely, if the information we marked pertains to individuals who are not currently licensed peace officers as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government

Code. In either instance, we find you failed to demonstrate the applicability of section 552.117(a)(2) to any portion of the remaining information. Accordingly, the city may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

If the information we marked under section 552.117 pertains to individuals who are not currently licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue are not currently licensed peace officers as defined by article 2.12, and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are not currently licensed peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1).² In either event, we find you failed to demonstrate the applicability of section 552.117(1) to any portion of the remaining information. Accordingly, the city may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You assert the remaining information is protected by common-law privacy. Upon review, however, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and, thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

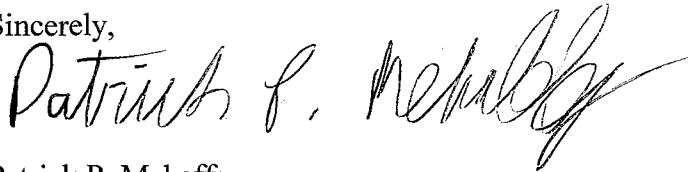
²Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. To the extent the information we marked pertains to individuals who are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information is at issue are not currently licensed peace officers as defined by article 2.12, and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/be

Ref: ID# 768078

Enc. Submitted documents

c: Requestor
(w/o enclosures)