



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2019

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap Street, 9th Floor
Fort Worth, Texas 76196-0201

OR2019-21324

Dear Mr. Kratovil:

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# 778210.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for correspondence to or from a named sheriff's office employee with five named individuals and two particular organizations, as well as correspondence containing specified terms, during a particular time period. You state the sheriff's office will provide some of the requested information to the requestor upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. You also state you notified the Anti-Defamation League 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.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹As of the date of this letter, we have not received comments from the Anti-Defamation League.

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We note some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Upon review, we conclude the password information we have marked is not “public information” for purposes of the Act, and the sheriff’s office is not required to release it in response to this request.²

Next, we must address the sheriff’s office obligations under the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). In this instance, the sheriff’s office received the request for information on May 10, 2019. You inform our office the sheriff’s office was closed on May 27, 2019. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) by June 3, 2019. However, the sheriff’s office did not provide the

²As we are able to make this determination, we need not address your argument against disclosure of this information.

information required by section 552.301(e) until June 4, 2019. *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). Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301 in requesting a decision from our office.

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). The sheriff's office claims sections 552.101, 552.108, and 552.111 of the Government Code for the information at issue. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the information at issue. However, we find you have failed to establish a compelling reason to address your remaining claimed exceptions.

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 exception encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 418.177 of the Government Code for some of the information at issue. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.177 provides as follows:

(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 measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 (1996). 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 HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You explain the

information at issue consists of information that was created to assist law enforcement in preventing and responding to hate crime incidents and terrorist attacks. You also state the information at issue contains assessments created by or for and maintained by the sheriff's office related to "specific risks and vulnerabilities to persons or property within Tarrant County to particular types of criminal activity or terrorism[.]" Upon review, we find the information we have indicated in Exhibit G and the information you marked in Exhibit H was 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 relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Therefore, the sheriff's office must withhold the information we have indicated in Exhibit G and the information you marked in Exhibit H under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. However, we find you failed to demonstrate the remaining information at issue 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 sheriff's office may not withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *Id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the password information we have marked is not "public information" for purposes of the Act, and the sheriff's office is not required to release it in response to this request. The sheriff's office must withhold the information we have indicated in Exhibit G and the information you marked in Exhibit H under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. T h e sheriff's office must release the remaining information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 778210

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)