



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 8, 2019

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196

OR2019-28150

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# 787558 (Ref. No. 19-07-0634).

The Tarrant County Sheriff's Office (the "sheriff's office") received eight requests from the same requestor for e-mails between named individuals during a stated period of time.¹ You state the sheriff's office will release most of the information to the requestor upon payment of costs. You state the sheriff's office is withholding certain information pursuant to sections 552.024(c), 552.130(c), and 552.136(c) of the Government Code.² You also state the sheriff's office is withholding certain information pursuant to Open Records

¹ You state, and provide documentation demonstrating, the sheriff's office sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615.

² Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Decision Nos. 670 (2001) and 684 (2009).³ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.⁴ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the sheriff's office is seeking clarification from the requestor pertaining to a portion of the requested information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the sheriff's office has not received a response to the request for clarification. Thus, we find the sheriff's office is not required to release information in response to the portion of the request for which the sheriff's office is seeking but has not received clarification. However, if the requestor clarifies or narrows the portion of the request for information for which the sheriff's office is seeking clarification, the sheriff's office must request a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

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 section encompasses information made confidential by other statutes, such as section 418.177 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). 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

³ Open Records Decision No. 670 is a previous determination authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting an attorney general decision under section 552.117(a)(2) of the Government Code. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴ We note the sheriff's office did not comply with the procedural requirements of section 552.301 of the Government Code with respect to a portion of the requested information. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the information at issue. *See id.* §§ 552.007, .302, .352.

(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 you indicated consists of intelligence bulletins sent to the sheriff's office from the Federal Bureau of Investigation and the El Paso Intelligence Center. You further explain the information at issue pertains to law enforcement responses to criminal activity at critical infrastructure locations, illegal modifications to firearms, and the smuggling of narcotics. You state the information at issue was provided to the sheriff's office "to assist law enforcement in deterring, preventing, pre-empting, or responding to criminal activity[.]" You assert the information at issue pertains to assessments of the vulnerability of persons and property to an act of terrorism or related criminal activity. Based on these representations and our review, we find the information at issue 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. Accordingly, the sheriff's office must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Section 552.101 of the Government Code also encompasses section 414.007 of the Government Code, which reads as follows:

A record relating to a tip received under Section 414.0015(a) maintained by the [Texas Crime Stoppers Council], a crime stoppers organization, a law enforcement agency, a school district, or an open-enrollment charter school, including the identity of the person who submitted the tip, is confidential and is not subject to disclosure under Chapter 552.

Act of May 27, 2019, 86th Leg., R.S., H.B. 3316, § 6 (to be codified at Gov't Code § 414.007). You state the information you indicated consists of information provided to a crime stoppers organization pursuant to section 414.0015 of the Government Code. *See id.* § 1 (to be codified at Gov't Code § 414.001(2)(B)) (defining "crime stoppers organization"); *see also id.* § 2 (to be codified at Gov't Code § 414.0015) (establishing procedures for accepting and forwarding crime stoppers tips). Thus, we conclude the

information you indicated is confidential under section 414.007 of the Government Code, and the sheriff's office must withhold it under section 552.101 of the Government Code on that basis.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. Deshazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You assert the remaining information consists of privileged communications between Tarrant County (the "county") attorneys and county employees in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to the county. Further, you state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the sheriff's office may withhold the remaining information under section 552.107 of the Government Code.

In summary, the sheriff's office must withhold the information you indicated 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 information you indicated under section 552.101 of the Government Code in conjunction with section 414.007 of the Government Code. The sheriff's office may withhold the remaining information under section 552.107 of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 787558

Enc. Submitted documents

c: Requestor
(w/o enclosures)