



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2020

Mr. Chad Timmons
Counsel for North Central Texas College
Abernathy Roeder Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2020-00450

Dear Mr. Timmons:

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# 804437 (ORR# DG-100819).

North Central Texas College (the "college"), which you represent, received a request for any marketing materials provided by Knightscope, Inc. ("Knightscope") and its contract with the college, its statement of work, and specified e-mails between Knightscope and the college. The college claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Additionally, the college states release of the submitted information may implicate the proprietary interests of Knightscope. Accordingly, the college states, and provides documentation showing, it notified the third party 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 § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the incident report in Exhibit D pertains to a closed criminal investigation by the college police department that did not result in

conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the college may withhold the report in Exhibit D under section 552.108(a)(2) of the Government Code.¹

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 protected by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). The college claims the remaining information is excepted from disclosure under section 418.182 of the Government Code. Section 418.182 provides, in relevant part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, 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 relate to a governmental body's security concerns or emergency management activities 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 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* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The remaining information pertains to the implementation of an autonomous security system. The college states the information includes references to the operating schedules of college security cameras, systems, and robots and their locations. The college asserts the security system is used by the college to protect the property from an act of terrorism or related criminal activity. Based on these representations and our review, we find the information we marked 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

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

criminal activity. Therefore, the college must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. However, we find the college has not demonstrated any of the remaining information 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. Thus, we find the college has not demonstrated the applicability of section 418.182 to the remaining information, and the college may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Knightscope explaining why the submitted information should not be released. Therefore, we have no basis to conclude Knightscope has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the college may not withhold any of the remaining information on the basis of any proprietary interest Knightscope may have in the information.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, with the exception of basic information, the college may withhold the report in Exhibit D under section 552.108(a)(2) of the Government Code. The college must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. The college must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', written over a horizontal line.

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 804437

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)