



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 27, 2020

Ms. Michele Freeland
Office of General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2020-06313

Dear Ms. Freeland:

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# 813926 (PIR# 19-5209).

The Texas Department of Public Safety ("department") received a request for documents and communications pertaining to a specified type of criminal activity. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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.*, Open Records Decision Nos. 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).

You state the submitted information, if released, would “reveal key components of the [d]epartment’s ability to deal with specific threats.” You argue the information at issue identifies techniques “used to detect information that is . . . passed to investigators in the field as leads to ongoing crimes being committed[.]” Based on these representations and our review, we agree the release of most of the submitted information would interfere with law enforcement. Accordingly, except for the information we marked for release, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.¹ However, we find the department has not demonstrated release of any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining 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. This section encompasses information that is made confidential by other statutes. You raise section 552.101 in conjunction with section 418.181 of the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.181 provides:

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 measures 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 of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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 seek to withhold the remaining information under section 418.181. However, upon review, we find you have not demonstrated any of the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden

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

of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Gov't Code § 418.181.

In summary, except for the information we marked for release, the department may withhold the submitted information under section 552.108(b)(1) of the Government Code. The department 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 <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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/rm

Ref: ID# 813926

Enc. Submitted documents

c: Requestor
(w/o enclosures)