



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2020

Mr. Albert E. Tovar  
VIA Metropolitan Transit  
Office of General Counsel  
123 North Medina Street  
San Antonio, Texas 78207

OR2020-26168

Dear Mr. Tovar:

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# 849682.

VIA Metropolitan Transit ("VIA") received a request for VIA Transit Police Department's (the "department") standard operating procedures. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).<sup>1</sup> A governmental body claiming sections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). 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), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers' licenses), 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.*, ORDs 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).

The submitted information consists of the department's standard operating procedures. You assert the submitted information, if released, would reveal law enforcement techniques and procedures and interfere with law enforcement and crime prevention. Based upon your representations and our review, we agree the release of some of the information at issue, which we marked, would interfere with law enforcement. Accordingly, VIA may withhold the information we marked under section 552.108(b)(1) of the Government Code.<sup>2</sup> However, we find you have not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Further, you do not

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<sup>1</sup> You cite to the decision of the Texas Supreme Court in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In that decision, the supreme court notes that section 552.108 serves the same function as the law enforcement exception under the federal Freedom of Information Act, which "prevents the disclosure of investigatory records which would reveal law enforcement methods, techniques, and strategies." *See A&T Consultants, Inc.*, 904 S.W.2d at 678; *see also* 5 U.S.C. § 552(b)(7). As section 552.108(b)(1) incorporates this aspect of the law enforcement exception, we consider your claim pursuant to section 552.108(b)(1) and we need not address the applicability of the court's holding in *A & T Consultants* to the submitted information.

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

inform us release of the remaining information would interfere with a particular pending criminal investigation or prosecution. Therefore, VIA may not withhold any of the remaining information under section 552.108(a)(1) or section 552.108(b)(1).

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

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 staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

*Id.* § 418.176(a). Section 418.181 of the Government Code provides the following:

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; *see also id.* § 421.001(2) (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). The fact that information may relate to a governmental body’s security concerns 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).

You assert the remaining information is confidential under sections 418.176 and 418.181 of the Government Code. However, upon review, we find you have failed to establish the remaining information is confidential under section 418.176 or section 418.181 of the

Government Code. Therefore, VIA may not withhold any of the remaining information under section 552.101 in conjunction with section 418.176 or section 418.181.

In summary, VIA may withhold the information we marked under section 552.108(b)(1) of the Government Code. VIA 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/rm

Ref: ID# 849682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)