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ATTORNEY GENERAL OF TEXAS

October 21, 2020

Mr. Charles E. Zech
Counsel for the City of Leon Valley
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2500 West William Cannon Drive, Suite 609
Austin, Texas 78745-5320

OR2020-26550

Dear Mr. Zech:

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# 847739 (ORR# LV-0002).

The City of Leon Valley (the "city"), which you represent, received a request for information related to neighborhood surveys performed by the city during a certain time period. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

¹ Although you raise section 552.117 of the Government Code for a portion of the information at issue, we note section 552.1175 of the Government Code is the proper exception to raise for information the city holds in a non-employment capacity. *See* Gov't Code §§ 552.117, .1175. In addition, although you also raise section 552.305 of the Government Code, we note section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 provides the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See id.* § 552.305.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

decision.” Gov’t Code § 552.101. You raise section 552.101 in conjunction with section 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.177 provides,

Information is confidential if the information:

(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 generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996). As with any confidentiality statute, a governmental body asserting section 418.177 must adequately explain how the responsive information falls within the scope of that provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You claim the submitted information consists of information gathered by the city’s police department in order to prevent, detect, or investigate criminal activity. However, we find you have failed to establish any of the information at issue was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with section 418.177 of the Government Code.

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. *Id.* § 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.*, 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).

You state release of the submitted information would benefit those looking to commit crimes within the community and adversely affect the city police department’s efforts to detect and prevent crimes. Based on this representation and our review, we agree the release of some of the information at issue would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the release of any of the remaining information would interfere with law enforcement or prosecution efforts. Accordingly, the city may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(b); *see also id.* § 552.1175(a) (types of individuals to whom section 552.1175 applies). Some of the remaining information may relate to individuals subject to section 552.1175 of the Government Code. However, we are unable to determine from the information provided which, if any, of the individuals at issue are subject to this exception. Thus, we must rule conditionally. Accordingly, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we indicated under section 552.1175 of the Government Code. Conversely, to the extent the individuals whose information is at issue are not subject to section 552.1175 or do not elect to restrict access to their information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175. However, we find you have failed to demonstrate the applicability of section 552.1175 to any portion of the remaining information, and the city may not withhold it on that basis.

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 *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. To the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we indicated under 552.1175 of the Government Code. The city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/gw

Ref: ID# 847739

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ The 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).