



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2020

Mr. Victor M. Cristales  
Counsel for the City of Frisco  
Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75070-1210

OR2020-31170

Dear Mr. Cristales:

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# 858071 (Ref. No. P043381).

The City of Frisco (the "city"), which you represent, received a request for the following types of information pertaining to a specified entity: (1) policies and manuals; (2) purchasing, procurement, and bid documents; and (3) agreements or memoranda of understanding. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> Additionally, you state release of the information at issue may implicate the proprietary interests of Securadyne Systems, LLC ("Securadyne"). Accordingly, you state, and provide documentation demonstrating, the city notified Securadyne of the request for information and of its 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 exception you claim and reviewed the submitted information.

Initially, we note the city has not submitted information responsive to the portion of the request seeking policies and manuals pertaining to the entity specified in the request. To

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<sup>1</sup> We note the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Additionally, 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 submitted information. *See* Gov't Code §§ 552.007, .302, .352.

the extent any additional information responsive to the request existed on the date the city received the present request, we assume the city has already released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Securadyne explaining why the information at issue should not be released. Thus, we have no basis to conclude the interested third party has a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold any portion of the submitted information on the basis of any proprietary interest Securadyne may have in it.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information that is made confidential by other statutes, such as sections 418.176, 418.177, and 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.176 provides, in relevant part:

(a) 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; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). 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

(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. Section 418.182 provides, in pertinent part:

(a) [I]nformation . . . 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 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 confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 claim some of the submitted information is confidential under sections 418.176, 418.177, and 418.182 of the Government Code. You state the information at issue "contains the detailed specifications and inner workings of devices utilized by [the city's police department] in assisting with law enforcement duties and responsibilities." You assert release of the information at issue "could put the security of public and/or private assets at risk." We note the information at issue pertains to the security and surveillance systems utilized by the city's police department and detention center. Upon review, we find some of the information at issue 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. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate any of the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider; was collected, assembled, or maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity; or 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. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177 or 418.182 of the Government Code.

We note some of the remaining information appears to be protected by copyright. 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

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

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, the city 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 city must release the remaining information; however, any information subject to 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 858071

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)