



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2022

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 North Riverfront Boulevard, LB-31
Dallas, Texas 75207-4313

OR2022-12526

Dear Ms. Lutton:

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# 944994.

The Dallas County Sheriff's Department (the "sheriff's department") received five requests from the same requestor for numerous categories of information pertaining to four specified events. We understand you will release some information to the requestor upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the sheriff's department will seek clarification from the requestor for portions of the requests for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the sheriff's department has not received a response from the requestor for these portions of the request. Thus, for the portions of the requests for which you have sought but not received clarification, we find the sheriff's department is not required to release information in response to those portions of the requests. However, if the requestor clarifies

these portions of the requests for information, the sheriff's department must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

Next, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-31099 (2020). You indicate the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the sheriff's department must continue to rely on Open Records Letter No. 2020-31099 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of completed reports that are subject to section 552.022(a)(1). The sheriff's department must release the information at issue pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Therefore, none of the submitted information may be withheld under section 552.111. However, we will consider your argument to withhold this information under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1). Further, because section 552.101 of the Government Code makes information confidential under the Act, we will consider your arguments under section 552.101 for the submitted information.

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 made confidential by other statutes, such as sections 418.176 and 418.177 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). 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) (language of confidentiality provisions 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 statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information contains details pertaining to equipment, personnel, and other resources used by the sheriff’s department in responding to mass gatherings. You also state release of the information at issue would hamper the sheriff’s department’s ability to respond to emergency situations and would assist criminals in such incidents. Based on your representations and our review, we find you have demonstrated the information at issue relates to tactical plans of an emergency response provider 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. Accordingly, the sheriff’s department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹

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

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 944994

Enc. Submitted documents

c: Requestor
(w/o enclosures)