



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2022

Ms. Lori J. Robinson
Counsel for the City of Lakeway
Bickerstaff, Heath, Delgado & Acosta, L.L.P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2022-18989

Dear Ms. Robinson:

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# 954147.

The City of Lakeway (the "city"), which you represent, received a request for (1) the names, titles, salaries, and duration of employment for all current city employees; (2) the city's employee handbook; (3) the city's police department's (the "department") code of conduct, general orders, policies, and procedures; and (4) a copy of a specified complaint form and information regarding the policies and procedures on processing the complaint.¹ You state the city released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.136 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, the city sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² Although the city also raises sections 552.107 and 552.111 of the Government Code, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume the city no longer asserts these exceptions. *See* Gov't Code §§ 552.301, .302.

Section 552.103 of the Government Code provides, in part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551. We note contested cases conducted under the Administration Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings ("SOAH") is considered litigation for the purposes of the APA. *See id.*

You inform us, and provide documentation showing, a case was pending in SOAH when the city received the instant request. However, upon review, we find you have failed to demonstrate the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, the city may not withhold the submitted information under section 552.103 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. 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). 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, 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 assert the information at issue, if released, would interfere with law enforcement or prosecution of crime. You state the submitted information includes information pertaining to emergency communications, property storage and destruction, safety procedures during special events, and guidelines for officers in investigations of crimes. You also state release of this information would interfere with law enforcement in that it would enable the public to disrupt police procedures, take advantage of police restrictions, and thwart police responses. Based upon these representations 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 indicated under section 552.108(b)(1) of the Government Code.³ However, upon review, we find you have failed to demonstrate the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the city 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 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:

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

- (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). 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 state the information at issue contains tactical plans and certain staffing procedures and responsibilities of the department, a law enforcement agency and emergency response provider, that relates to the prevention, detection, and investigation of terrorism or related criminal activity. You argue release of this information would compromise the department's ability to respond to acts of terrorism and related activities and allow criminals to avoid detection and apprehension. Based upon these representations and our review, we find some of the information at issue relates to staffing requirements or a tactical plan of the city and is maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider. Therefore, the city may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the information we marked under section 552.136 of the Government Code. However, we find you have not explained how any of the remaining information consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to

disclosure applies). Therefore, we find the city failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information you marked and the city may not withhold it on this ground.

In summary, the city may withhold the information we indicated under section 552.108(b)(1) of the Government Code. The city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city must withhold the information we marked under section 552.136 of the Government Code. 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 954147

Enc. Submitted documents

c: Requestor
(w/o enclosures)