



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2018

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2018-09588

Dear Mr. Kopp:

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# 706022 (COSA File No. W202031).

The City of San Antonio (the "city") received a request for the city's police department's general manual as adopted during a specified time period. You state the city will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the city's obligations under the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code. § 552.301(b). The city received the request for information on February 3, 2018, which was a Saturday. Therefore, we consider the request as being received on the next business day, February 5, 2018. You do not inform us the city was closed for any business days between February 5, 2018, and February 19, 2018. Accordingly, the ten-business-day deadline for

¹We 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.

requesting a ruling from this office was February 19, 2018. The envelope in which the city submitted to this office the information required by section 552.301(b) was post-marked February 20, 2018. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes. 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. Section 418.176 provides, in relevant part, as follows:

(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 a 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 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 the 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 relates to procedures and police tactics maintained by the city that are used to “prevent, detect, respond to, and investigate an act of criminal activity or terrorism.” Further, you assert release of the information would compromise the ability of the city’s police department to respond to such incidents by revealing the city’s plans and procedures in responding to certain types of incidents. Based on your representations and our review, we find you have demonstrated most of the submitted information relates to staffing requirements or tactical plans maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, with the exception of the information we marked for release, the city must withhold the submitted information 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 information we marked for release relates to staffing requirements or a tactical plan of an emergency response provider, or consists of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, the city may not withhold the marked information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code, and it must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/tdw

Ref: ID# 706022

Enc. Submitted documents

c: Requestor
(w/o enclosures)