

TEXAS DEPARTMENT OF PUBLIC SAFETY

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July 6, 2020

Via First Class Mail

Attorney General of Texas
Open Records Division
PO Box 12548
Austin, Texas 78711-2548

RE: Public Information Request for information related to the use of two DPS Pilatus planes
(PIR 20-2074)

DATE REQUEST FOR INFORMATION PIR 20-2074 RECEIVED:
DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:

06/26/2020
07/06/2020

Dear Open Records Division:

The Department of Public Safety received the above-referenced request for information from Enid Zhou on June 26, 2020. We believe a portion of the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. Accordingly, we are requesting a ruling regarding the release of these records.

Law Enforcement Sensitive

Section 552.101 of the Government Code states that “[i]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism and related criminal activity.

Section 552.101 encompasses section 418.176 of the Government Code, which states, 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 the 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.

Section 418.177 of the Government Code states:

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.

Sec. 418.181 of the Government Code states that documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Critical infrastructure is defined as “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.” Gov’t Code § 421.001(2).

The Department also believes the submitted information is excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code, which states:

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
 - (1) release of the internal record or notation would interfere with law enforcement or prosecution.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). Your office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. See, e.g., Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law

enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 552.108 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 maybe excepted).

The responsive information consists of three videos recorded by the Department's Pilatus aircraft during the time period listed by the requestor. The videos contain both video and audio. Due to the Department's retention policy, these are the only responsive videos. The aircraft is used for a variety of purposes including pursuits, manhunts, search and rescue, disaster relief. surveillance, aerial photography and border security operations. The aircraft is also used to support the efforts of other law enforcement agencies for similar purposes.

The Department believes that releasing these videos would reveal certain protocols used by pilots that are not commonly known or available to the general public. This information relates to tactical plans used by the Department in preventing, detecting, responding to, and investigating acts of terrorism and related criminal activity. Releasing this type of video would reveal law enforcement techniques that detail ongoing operations as well as the staff used by the Department to detect, prevent, and respond to terroristic threats and other criminal activities. If released, this information would provide wrong-doers, terrorists, and criminals with invaluable information concerning staffing and law enforcement intelligence techniques that are used to locate information which is passed to investigators and law enforcement personnel on the ground as leads to ongoing crimes being committed, and threats in the planning stage of criminal conspiracies (such as public disruptive threats, active shooters, etc.) that may be evolving. Disclosure of these techniques would provide specific information that would hamper this ability currently and in the future in regard to public safety threats and criminal organization groups and individuals. Consequently, the Department believes the responsive information should be excepted from required public disclosure under sections 552.101 and 552.108(b)(1) of the Government Code.

Please find enclosed the request from Enid Zhou, the notice of our request for a ruling sent to the requestor, and the responsive records we wish to except from required disclosure. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

ML Calcote

ML Calcote
Assistant General Counsel

Enclosure(s)

cc: Enid Zhou – via email zhou@epic.org
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Washington, DC 20036