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August 14, 2012

Honorable Greg Abbott
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail No.: 7011 2970 0002 9851 2215

Re: City of Fort Worth Public Information Request No. W019013 from Daniel Collins
Request for records related to ALPR's

Dear Attorney General Abbott:

On July 31, 2012, the City of Fort Worth (the "City") received a written request from Daniel Collins (the "requestor") for records related to ALPR's. Exhibit "A" contains a certification of the date the City received this request. A copy of the request is included as Exhibit "B."

A portion of the responsive records can be immediately released to the requestor. The Police Department submitted an Affidavit of No Record for the records and information that they were unable to locate. Also, the Transportation and Public Works Department has already responded to the requestor by notifying him that they had no responsive records. The City believes that the responsive records are excepted from disclosure under sections 418.177, 418.181, 552.108, and 552.111 of the Texas Government Code. Therefore, the City is seeking a ruling from your office in accordance with section 552.301 of the Texas Government Code. Exhibit "C", which will be provided on disc only, contains the information at issue.

Certain Equipment and Tactical Information for the Law Enforcement Investigation Exception is excepted under Texas Disaster Act/Homeland Security Laws.

The requestor asks for documents that relate to the license plate recognition system that the City's Police Department is purchasing to detect terroristic activity and to apprehend criminals in dangerous situations such as child kidnappings and undercover drug cartel law enforcement operations. Please see additional information that is contained in confidential Exhibit "D".

¹ Pursuant to section 552.130(c), the City has redacted certain motor vehicle record information relating to living individuals other than the requestor described by subsections (a)(1) and/or (3). Because this provision is intended to protect privacy, the City does not seek to withhold deceased persons' information or the requestor's information under these exceptions.

The requested records are held by the City's Police Department to prevent, detect, respond to, and investigate acts of terrorism or related criminal activity and their release to the public would compromise law enforcement purposes. The release of these records would violate sections 418.177 and 418.181 of the Texas Government Code which is part of the Texas Disaster/Homeland Security Act. These sections pertain to the confidentiality of certain information relating to emergency response providers.

Texas Government Code sections 418.177 and 418.181

The City also believes that that the submitted information may be confidential pursuant to sections 418.177 and 418.181 of the Government Code.

Section 418.177 provides:

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.

Section 418.181 provides:

Those 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.

Tex. Gov't Code §§ 418.177 & 418.181.

The City contends that the submitted information falls within the scope of sections 417.177 and 418.181 of the Texas Government Code. The submitted information is collected, assembled and maintained by and for the City for the purpose of preventing, detecting and investigating an act of terrorism or related criminal activity. Additionally, the information contains a list of specific equipment that if released, would create a vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. This information would allow terrorists and/or organized criminal groups to access and defeat the City's equipment.

The release of this information in Exhibit "C" makes it available to everyone. Terrorists and criminals are not barred from making public information requests. The release of this information to anyone will jeopardize the lives of police officers, citizens, and other individuals in the City. The information the City seeks to withhold relates to the security equipment 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. The City believes that this information should be excepted under section 552.101 in conjunction with section 418.177 and 418.181 of the Texas Government Code. Therefore, the submitted information may be withheld as confidential under section 418.177 and 418.181.

The release of internal records will interfere with law enforcement activities.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Tex. Gov’t Code § 552.108(b)(1).

A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. See *id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.--Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); *Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989)*. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See *Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor)*.

Your office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. See, e.g., *Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (sketch showing security measures for forthcoming execution), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 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) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment)*. Your office has noted that, for purposes of section 552.108, the arson investigation division of a fire department is considered a law enforcement unit. See *Open Records Decision No. 127 at 8 (1976)*. In *Open Records Decision No. 506 (1988)*, your office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” *Id.* at 2. Your office noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

The City asserts that all or portions of the requested information in Exhibit “C” reveal police specific law enforcement investigation equipment that during possible terroristic attacks and sensitive

emergency and life threatening events would divulge the intricate internal workings of the City Police Department's methods, techniques, and strategies for preventing and detecting crime during the terroristic threats and/or organized criminal groups. The City believes that revealing this type of information would permit private citizens with criminal intentions to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State. Specifically, the release of the equipment in Exhibit "C" would place officers at a disadvantage in detecting crime and would give clear advantages to criminals. Therefore, the City asserts that the submitted information is excepted under section 552.108(b)(1) of the Texas Government Code.

The information is excepted under the deliberative process privilege.

In addition, the submitted documents are excepted from disclosure under Section 552.111. Section 552.111 of the Texas Government Code excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." Tex. Gov't Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), your office re-examined the statutory predecessor to section 552.111 in light of the decision in *Tex. Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ).

You determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect a governmental body's policymaking processes. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Tex. Gov't Code § 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Moreover, your office determined that section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (19 82) (addressing statutory predecessor).

Your office also has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (addressing statutory predecessor).

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Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

The City contends that the information in Exhibit "C1" contains a preliminary draft of the proposed Standard Operating Procedures for the Fort Worth Police Department. In its final form, these procedures are intended for public disclosure. While the communication may contain facts, these facts are so intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical; therefore, the factual information also may be withheld under section 552.111. For this reason, the City believes that the information in Exhibit "C1" may be withheld under the deliberative process privilege under section 552.111.

Respectfully submitted,

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Assistant City Attorney

Enclosures

Cc w/o enclosures: Mr. Daniel Collins
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