



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2010

Mr. Steven C. McCraw
Director
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

Open Records Decision No. 685

Re: Whether a Texas Department of Public Safety personal protection questionnaire completed by a government official is confidential under section 418.177, Government Code (ORQ-70)

Dear Director McCraw:

You ask whether a personal protection questionnaire completed by a government official and submitted to the Texas Department of Public Safety (the "Department") as part of the Department's Capitol Protection Program is confidential under section 418.177 of the Government Code.¹ We consider whether a completed questionnaire is excepted from public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code, as information confidential by statutory law.² TEX. GOV'T CODE ANN. § 552.101 (West 2004).

You inform us that as part of the Department's Capitol Protection Program, the Executive Protection Bureau (the "Bureau") protects government officials who require

¹See Letter from Mr. Steven C. McCraw, Director, Texas Department of Public Safety, to Honorable Greg Abbott, Attorney General of Texas (April 28, 2010) (on file with the Open Records Division, also available at www.oag.state.tx.us/opinions/openrecords/50abbott/orq/2010/pdf/orq20100070.pdf) [hereinafter Request Letter]. You ask your question prior to distributing the questionnaire to any government official. *Id.* at 1. You do not indicate the Department has received a request for a specific completed questionnaire. *Id.*

²We note another open records question, whether the Department must withhold certain travel records of the Governor's security detail under the Act in conjunction with section 418.176(a) of the Homeland Security Act ("HSA"), is pending before the Texas Supreme Court. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, LP & Hearst Newspapers, LLC*, 287 S.W.3d 390 (Tex. App.—Austin 2009), *pet. filed*, Cause No. 09-0530 (Tex. June 30, 2009); TEX. GOV'T CODE ANN. § 418.176(a) (West 2005). Because the question you ask involves both different information and a different HSA provision, we will answer it.

security and protection services, such as the Governor, state officials, and federal or foreign officials who visit Texas. Request Letter, *supra* note 1, at 1. You state when a government official requires or requests security, the Bureau intends to use the personal protection questionnaire to ask the official to provide the Bureau and the Department's Intelligence & Counterterrorism Division (the "Division") detailed information about his or her life, including, for example, the names and addresses of family members, business associates, and friends; places frequently visited by the official and family members; routine travel destinations; and transportation methods. *Id.* You state the Department developed the questionnaire in response to concerns regarding terrorist threats of attacks against high-ranking members of Texas government for the purpose of providing comprehensive protection against terrorist and criminal acts. *Id.* at 2, 3. The questionnaire "is specifically designed to identify security vulnerabilities for government officials and their families. . . . [T]he Department's . . . Division will use the information gathered by the questionnaire to develop a personal threat assessment for each government official requesting executive protection services from the Department." *Id.* at 3. You also state the Bureau and the Division will keep the questionnaire in a strictly controlled environment. *Id.* at 2-3.

Section 418.177 of the Government Code reads as follows:

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.

TEX. GOV'T CODE ANN. § 418.177 (West 2005). In deciding the applicability of section 418.177 to the personnel protection questionnaire, we must consider whether the Department has established each element of the statute.³

We first consider subsection (1) of section 418.177, which requires the Department to establish two elements: 1) the information is collected, assembled, or maintained by or for a governmental entity and 2) the purpose of the information is to prevent, detect, or investigate an act of terrorism or related criminal activity. *Id.* § 418.177(1). The Department

³Although your question does not arise in the context of a pending written request for the information under the Act, a governmental body seeking to withhold requested information under the Act has the burden to establish the applicability of a confidentiality statute or an exception to required public disclosure. TEX. GOV'T CODE ANN. § 552.301(e)(1)(A) (West Supp. 2010).

explains the Bureau and Division collect and maintain the information in the questionnaire for the purpose of providing protection to government officials against terrorist acts. Request Letter, *supra* note 1, at 2-3. The protection of government officials against terrorist acts necessarily involves preventing, detecting, and investigating an act of terrorism or related activity. Thus, you have shown the information 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 have satisfied the first part of section 418.177.⁴ TEX. GOV'T CODE ANN. § 418.177(1) (West 2005).

Subsection (2) of the statute requires the Department to establish two elements: 1) the information "relates to" an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity and 2) the assessment to which the information relates is by, for, or maintained by a governmental entity. *Id.* § 418.177(2). "Relates to" means to have a connection with, to refer to, or to concern. *Tex. Dep't. of Pub. Safety v. Abbott*, 310 S.W. 3d 670, 674-75 (Tex. App.—Austin 2010, no pet.). The use of the term "relates to" has the effect of broadening the scope of the information covered by section 418.177 to more information than just a risk and vulnerability assessment. *See id.* at 675 (finding use of term "relates to" in Government Code section 418.182 broadens its scope to shield more information than just the information specified). As the questionnaire "is specifically designed to identify security vulnerabilities for government officials and their families" and will be used "to develop a personal threat assessment for each government official requesting executive protection services from the Department," it relates to an assessment of the risk or vulnerability of persons or property. Request Letter, *supra* note 1, at 3; TEX. GOV'T CODE ANN. § 418.177(2) (West 2005). Furthermore, the assessment is conducted by and for -- as well as maintained by -- the Bureau and the Division. Request Letter, *supra* note 1, at 2-3. Thus, the Department has shown that the questionnaire relates to an assessment of risk or vulnerability to terrorism made by and for a governmental entity and is maintained by a governmental entity and thereby satisfies subsection (2) of section 418.177. Consequently, based on your representations in regard to the elements of the statute, we conclude the questionnaire, when completed by a governmental official and submitted to the Department, is confidential under section 418.177. TEX. GOV'T CODE ANN. § 418.177(2) (West 2005). Thus, if requested under the Act, the Department must withhold a completed personal protection questionnaire from a requestor based on section 552.101 of the Government Code, an exception in the Act for information deemed confidential by law, including information made confidential by statute. *Id.* § 552.101 (West 2004).

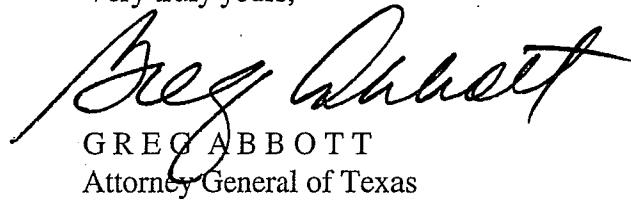
⁴For purposes of determining the applicability of section 418.177 in this case, it is sufficient that the Department states the purpose of the questionnaire is to prevent terrorist acts. *See Tex. Att'y Gen. Op. GA-249* at 2 (2004) (attorney general assumes requesting governmental body sets forth correct and complete version of facts).

This decision serves as a previous determination allowing the Department to withhold a completed personal protection questionnaire under section 552.101 in conjunction with section 418.177 without the necessity of first requesting an attorney general decision. *See id.* § 552.301(a) (West Supp. 2010) (requiring governmental body to request attorney general decision when it seeks to withhold requested information unless information is subject to previous determination). So long as the elements of law, fact, and circumstances do not change so as to no longer support our conclusion set forth above, the Department need not ask for a decision from this office with respect to the required public disclosure of a completed personal protection questionnaire requested under the Act. *See* Tex. Att'y Gen. ORD-673 (2001) at 6-9 (discussing criteria for two types of previous determinations).

S U M M A R Y

A personal protection questionnaire completed by a government official and submitted to the Texas Department of Public Safety for its use in assessing risk and vulnerability of persons or property to terrorism is confidential under section 418.177 of the Government Code. So long as the elements of law, fact, and circumstances relevant to this conclusion do not change, the Department may withhold a personal protection questionnaire from required public disclosure without the necessity of seeking an attorney general decision.

Very truly yours,


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