



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



January 29, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-01824

Dear Ms. Cost:

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# 551905 (DPS PIR# 14-4669).

The Texas Department of Public Safety (the "department") received a request for a list of the school districts participating in the school marshal program. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of some of the submitted information may implicate the interests of the Texas Commission on Law Enforcement (the "commission"). Accordingly, you state, and provide documentation showing, you notified the commission of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the commission. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor only seeks the identity of participating school districts. We agree the information the department has indicated is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

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 the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides, in relevant part, 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.

Id. § 418.177. The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.177 must be accompanied by an adequate explanation of 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).

The commission raises section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code for the responsive information. However, upon review, we find the commission has failed to establish the responsive information was collected, assembled, or is maintained by or for the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and 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 for purposes of section 418.177. Thus, the commission has not established the applicability of section 418.177 of the Government Code to the responsive information, and the department may not withhold the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 1701.260 of the Occupations Code, which provides, in relevant part, as follows:

(a) The commission shall establish and maintain a training program open to any employee of a school district or open-enrollment charter school who holds a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person's name, the person's date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person's place of employment.

...

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the [department];

...

(l) Identifying information about a person collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 1701.260(a)-(b), (j)(1), (l). The commission and the department assert the responsive information is identifying information for the purposes of section 1701.260. However, upon review, we find the responsive information does not consist of the identifying information about a person collected under section 1701.260. Accordingly, we conclude the department may not withhold the responsive information under section 552.101 in conjunction with section 1701.260 of the Occupations Code.

The commission raises the common-law physical safety exception which is also encompassed by section 552.101 of the Government Code. The Texas Supreme Court has recognized a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112 (Tex. 2011) (holding "freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). Pursuant to the common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. Upon review,

we find the commission has not demonstrated the release of the responsive information would subject any person to a substantial threat of physical harm. Accordingly, the department may not withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The commission raises section 552.152 of the Government Code for the responsive information. Upon review, we find the commission has not demonstrated the release of the responsive information would subject an employee or officer of the commission to a substantial threat of physical harm. Accordingly, the department may not withhold the responsive information under section 552.152 of the Government Code. As no further exceptions have been raised, the department must release the responsive 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 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 551905

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035
(w/o enclosures)

MAY 16 2018 *nm*

At 1:28 p M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-000697

TEXAS DEPARTMENT OF PUBLIC SAFETY,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

201st JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff the Texas Department of Public Safety (DPS) sought to withhold certain requested information from public disclosure. All matters in controversy between DPS and Defendant Ken Paxton, Attorney General of Texas (Attorney General), arising out of this lawsuit are resolved by a Settlement Agreement, a copy of which is attached as Exhibit "A," and the parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. See Tex. Gov't Code § 552.325. The Attorney General represents to the Court that in compliance with Texas Government Code section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Josh Hinkle, on April 17, 2018, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that DPS must withhold the information at issue. The requestor was also informed of his right to intervene in the

that a final judgment would be presented at uncontested docket on May 9

suit to contest this Agreed Final Judgment. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate.

IT IS THEREFORE ORDERED AND DECLARED that:

1. DPS must withhold the information identifying the school districts on Bates-stamped pages DPS000001 through DPS000012 from disclosure pursuant to Tex. Occ. Code § 1701.260(I). Consistent with Letter Ruling OR2015-01824, DPS is not required to release information on Bates-stamped pages DPS000001 through DPS000012 that is not responsive to the request.

2. All court cost and attorney fees are taxed against the parties incurring the same;

3. All relief not expressly granted is denied; and

4. This Order disposes of all claims between the parties and is a final judgment.

Signed this the 16th day of May, 2018.



PRESIDING JUDGE

AGREED:



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TEXAS DEPARTMENT OF PUBLIC SAFETY



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ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-15-000697

TEXAS DEPARTMENT OF PUBLIC SAFETY, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	201st JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Texas Department of Public Safety (DPS) and Defendant Ken Paxton, Attorney General of Texas (Attorney General).

I. BACKGROUND

In November of 2014, the DPS received a written request for information from Mr. Josh Hinkle under the Public Information Act (PIA) for “a list of school districts in the state participating/training in the school marshal program – part of the legislation HB 1009 in 2013.” DPS asked for an open records ruling from the Attorney General, asserting DPS does not have a responsive list of school districts participating in the marshal program, and the information identifying the school districts was confidential pursuant to Texas Government Code section 552.101. The Attorney General issued Letter Ruling OR2015-01824 in response, ruling the Department must release the information identifying the school districts. However, the ruling explained that DPS was not required to release information that is not responsive to the request.

After this lawsuit was filed, DPS established the responsive information is confidential pursuant to Tex. Occ. Code § 1701.206(l) as information collected or submitted under section 1701.206. The Attorney General agrees that the requested information is confidential. Pursuant to section 552.325(c) of the Texas Government Code, the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. The parties agree to the following terms.

II. TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties agree and stipulate that:

1. DPS must withhold the information identifying the school districts on Bates-stamped pages DPS000001 through DPS000012 from disclosure pursuant to Tex. Occ. Code § 1701.260(l). Consistent with Letter Ruling OR2015-01824, DPS is not required to release information on Bates-stamped pages DPS000001 through DPS000012 that is not responsive to the request.

2. The Attorney General agrees to notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of his right to intervene to contest DPS's right to withhold the information. If the requestor intervenes to contest DPS's right to withhold the information at issue, the terms of a final judgment entered in this lawsuit after a requestor intervenes shall prevail over the terms of this Agreement.

3. DPS and the Attorney General agree to the entry of an agreed final

judgment, the form of which has been approved by each party's attorney.

4. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

5. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

6. DPS warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that DPS has against the Attorney General arising out of the matters described in this Agreement.

7. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against DPS arising out of the matters described in this Agreement.

8. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

AGREED:

Date: 4/12/2018

Date: 4/13/2018

Molly Cost

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