



February 9, 2015

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-02528

Dear Ms. Nicholson:

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# 553042.

The City of Austin (the "city") received a request for the Austin Travis County Emergency Medical Services Department ("EMS") and Office of the Medical Director's: pandemic flu plan, succession of operations plan, business operating plan, emergency stock inventory list for epidemics, current inventory of personal protective equipment and expiration, and the city's policy on maintenance and availability of essential planning for essential departments. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

¹We note, and you acknowledge, the city has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Because section 552.101 is a mandatory exception to disclosure and may not be waived, we will consider the applicability of section 552.101 of the Government Code for the submitted information. *See Gov't Code* §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

We note you only submitted the succession of operations plan specified in the request. We assume, to the extent any information responsive to the remainder of the request existed on the date the city received the request, the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 exception encompasses information that is made confidential by other statutes, including the HSA. Section 418.176 of the HSA provides 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; [or]

(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)(1)-(3). 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). 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 information at issue includes the city’s Continuity of Operations Plan for the EMS. You contend the submitted information is a tactical plan maintained by the city to ensure the continued performance of identified essential EMS functions during a wide range of potential emergencies or situations that might disrupt normal operations, including acts of terrorism. You state the plan delineates essential functions, provides for the safekeeping of vital records and databases, identifies alternate operating facilities, and provides for interoperable communications. Upon review, we find the city has demonstrated the submitted information was collected, assembled, or maintained by or for the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related

criminal activity and relates to a tactical plan of the city. Accordingly, the city must withhold the information at issue under section 552.101 in conjunction with section 418.176 of the Government Code.²

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 553042

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.