



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2015

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

OR2015-20001

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# 580751 (PIR No. 15-2840).

The Texas Department of Public Safety (the "department") received a request for specified reports provided to the Federal Emergency Management Agency during a specified time period.¹ You state the department has provided some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹You state the department sought and received clarification of the request for information. See Gov't Code §552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

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. We understand you to raise section 552.101 in conjunction with a provision of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.180 provides:

Information, other than financial information, in the possession of a governmental entity is confidential if the information:

- (1) is part of a report to an agency of the United States;
- (2) relates to an act of terrorism or related criminal activity; and
- (3) is specifically required to be kept confidential:
 - (A) under Section 552.101 because of a federal statute or regulation;
 - (B) to participate in a state-federal information sharing agreement; or
 - (C) to obtain federal funding.

Id. § 418.180. The fact that information may be related to a governmental body’s security concerns, biological toxins, or emergency preparedness does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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).

You argue the submitted information is confidential for purposes of section 418.180 of the Government Code because it is part of a report to an agency of the United States that relates to an act of terrorism or related criminal activity and is specifically required to be kept confidential under section 552.101 because of a federal statute or regulation and to participate in a state-federal information sharing agreement. You state the information at issue is maintained as part of the department’s participation in the Protected Critical

Infrastructure Information Program (the “program”) through the United States Department of Homeland Security (the “DHS”). In support of your argument, you have submitted an excerpt from the DHS Protected Critical Infrastructure Information Program Procedures Manual (the “manual”).³

You argue the information is made confidential by the federal Critical Infrastructure Information Act of 2002 (“CIIA”), title 6, sections 131 through 134 of the United States Code. 6 U.S.C. §§ 131-134. Section 133 pertains to the protection of certain voluntarily shared critical infrastructure information and the identities of persons or entities submitting such information. *Id.* § 133. We note the term “critical infrastructure information” means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. *See* App. 2, Protected Critical Infrastructure Information Program Procedures Manual (2009); *see also id.* (defining “in the public domain”).

You also inform us, and the manual indicates, the program is part of an information sharing agreement between the department and the DHS. In this instance, the information sharing agreement protects critical infrastructure information, including the identity of a person providing such information, from disclosure under the federal Freedom of Information Act and similar state and local disclosure laws when the information is voluntarily submitted to the DHS, directly or indirectly. *See* § 1, Protected Critical Infrastructure Information Program Procedures Manual (2009). We note in order to receive protection, the manual requires such information be accompanied by an express statement affirming the information was submitted in expectation of legal protections and in the absence of an exercise of legal authority by the DHS to compel access to or submission of the information. *See id.* § 3.2. After review of your statements and the information at issue, we find you have failed to demonstrate how any of the specific provisions of the CIIA and the manual apply to the information at issue. *See* Gov’t Code § 552.301(e)(1)(A). Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.180 of the Government Code on that basis. As no further exceptions to disclosure have been raised, the department must release the submitted 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/>

³A complete copy of the manual may be found on the DHS website at http://www.dhs.gov/xlibrary/assets/pcii_program_procedures_manual.pdf.

[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,

A handwritten signature in cursive script that reads "Britni Fabian". The signature is written in dark ink and is positioned above the printed name and title.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 580751

Enc. Submitted documents

c: Requestor
(w/o enclosures)