



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2015

Ms. Barbara L. Klein
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2015-22525

Dear Ms. Klein:

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# 586559 (DSHS OR File No. 24662/2015).

The Texas Department of State Health Services (the "department") received a request for (1) copies, logs, and notes of a specified facility; and (2) the indoor and outdoor surveys and scans of the facility for a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You contend the information at issue is confidential under section 552.101 in conjunction with section 418.178 of the Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 418.178 was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act and provides as follows:

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

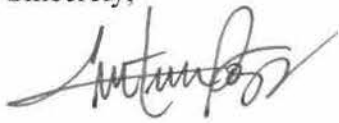
Id. § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You state the information you have marked “includes diagrams or photographs of the facility, identifying names of rooms or locations in written descriptions, and words that would identify radioactive material.” You further state the information at issue reveals the specific location of radioactive material. Upon review, we find the information you marked is confidential under section 418.178 of the Government Code. Therefore, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code.² As you raise no other exceptions to disclosure, the department must release the remaining information.

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

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written over a horizontal line.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/akg

Ref: ID# 586559

Enc. Submitted documents

c: Requestor
(w/o enclosures)