



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2016

Ms. Lisa Calem-Lindstrom
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2016-19402

Dear Ms. Calem-Lindstrom:

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# 626633.

The Texas Facilities Commission (the "commission") received a request for information pertaining to requisition number 303-7-00002. The commission claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The commission does not take a position as to whether the remaining information is excepted from disclosure under the Act. However, it states, and provides documentation showing, it notified Allied Barton Security Services; Premier ISA; Ruiz Protective Services, Inc.; and Security Walls of the commission's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d)*; *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.

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 section 418.176(a) of the Government Code, which provides as follows:

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;
- (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). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.176. *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 sections 418.176 must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The commission seeks to withhold post orders within two contracts related to private security officers at state-owned facilities. The commission asserts it designed and specified the post orders from security risk assessments of the state-owned facilities at issue. It also asserts these post orders, which it has marked, set out the day-to-day tactical plan of the private security officers, and the contractual services are provided to prevent, detect, and investigate terroristic or criminal activity. Upon review, we find the information at issue relates to the commission's staffing requirements and tactical plan, and is maintained by the commission for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the commission must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes

¹As our ruling is dispositive, we do not address the other argument of the commission to withhold this information.

proprietary information of these third parties, and the commission may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the commission must withhold the account numbers we have marked under section 552.136 of the Government Code. The commission must also withhold the insurance policy numbers located in the remaining information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

To conclude, the commission must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The commission must also withhold the information we have marked and the insurance policy numbers located in the remaining information under section 552.136 of the Government Code. The commission must release the remaining information, but may only release any copyrighted information in accordance with copyright law.


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/>

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 626633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)