



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2017

Ms. Robin B. Cross
Township Attorney
Township of The Woodlands
2801 Technology Forest Boulevard
The Woodlands, Texas 77381

OR2017-01084

Dear Ms. Cross:

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# 641539.

The Township of The Woodlands (the "township") received a request for all e-mails between the director of law enforcement and the township board, the Montgomery County Sheriff's Office (the "sheriff's office"), the Montgomery County Precinct Three Constable's Office, and two named individuals for a specified time period. You state the township has release most of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you cited section 552.102 of the Government Code, we understand you to assert section 552.101 of the Government Code based on your arguments.

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

Gov't Code § 552.022(a)(3). The information at issue consists of invoices and receipts relating to the expenditure of public funds subject to section 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the township may not withhold the information subject to section 552.022(a)(3) under section 552.108. However, because section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.101 to the information at issue.

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, in part, 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:

...

(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)(3). 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 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 explain the township pays for certain “aircards” to be used in laptop computers by deputies in the sheriff’s office as part of an interlocal agreement for the sheriff’s office to provide law enforcement services to the township. You explain the cellular telephone numbers contained in the submitted invoices are associated with the aircards for billing purposes. You state the cellular telephones to which these numbers pertain are used by sheriff’s office deputies in the course and scope of their law enforcement duties, in detecting, reporting, and investigating criminal behavior. You thus assert release of the cellular telephone numbers would interfere with law enforcement and crime prevention, jeopardize officer safety, and increase the vulnerability of law enforcement personnel to ambush. You have additionally submitted comments from the sheriff’s office contending release of the information at issue could result in communications systems being hacked, thereby jeopardizing criminal investigations and prosecutions. Upon review, we conclude the information at issue was collected, assembled, or maintained by or for the township for the purpose of responding to an act of terrorism or related criminal activity and falls within the scope of section 418.176(a)(3). *See id.* § 418.176(a)(3). Therefore, the township must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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 *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the township must withhold the account and credit card numbers we marked under section 552.136 of the Government Code.

In summary, township must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The township must withhold the account and credit card numbers we marked under section 552.136 of the Government Code. The township must release the remaining 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/>

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (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,

A handwritten signature in cursive script, appearing to read "Ramsey A. Abarca", with a long, sweeping flourish extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 641539

Enc. Submitted documents

c: Requestor
(w/o enclosures)