



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2017

Mr. Zachary Brown
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-27920

Dear Mr. Brown:

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# 687349 (PIR# 37058).

The City of Austin (the "city") received a request for communications involving named city employees regarding a specified subject. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹

Initially, we note some of the information at issue was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-25586 (2017). In that ruling, we determined the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. We have no indication the law, facts, or circumstances on which the

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.

prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2017-25586 as a previous determination and withhold the information at issue in accordance with that ruling.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your argument for the submitted information not subject to the previous ruling.

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 information protected by other statutes, such as section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides in 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[.]

Id. § 418.176(a)(1)-(2). 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).

The city states the submitted information contains the city’s response to a catastrophic event. The city further states the information relates to an emergency response provider’s staffing requirements and tactical plan. Based on these representations and our review, we find the city has established some of the submitted information relates to the staffing requirements of an emergency response provider or relates to a tactical plan of the provider under section

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

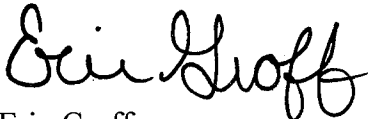
418.176. *See id.* § 418.176(a)(1)-(2). Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find the city has failed to demonstrate any of the remaining information fits within the confidentiality provisions of section 418.176. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2017-25586 as a previous determination and withhold the information at issue in accordance with that ruling. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city 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/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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 687349

Enc. Submitted documents

c: Requestor
(w/o enclosures)