



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2018

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

OR2018-03364

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# 695035 (PIR# 17-8570).

The Texas Department of Public Safety (the "department") received a request for a specified jurisdiction preparedness profile and emergency plan. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the City of Victoria (the "city") and Victoria County (the "county"). Accordingly, you state, and provide documentation showing, you notified these third parties of their right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the county.¹ We have considered the submitted arguments 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." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to

¹As of the date of this letter, we have not received comments from the city explaining why the submitted information should not be released.

chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176 of the HSA provides in relevant 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;

(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). Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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 assert the submitted information “outlines the approach, prevention, detection, response, assessment, and investigation related to a disaster in the city and county.” The county further argues the submitted information “contain[s] both strategic and tactical information that may be employed in all hazardous environments, including terrorism or criminal activity.” You further state the submitted information “is maintained for the purpose of responding to an act of terrorism as it relates to an emergency response provider’s staffing requirements and tactical plan.” Upon review, we find most of the submitted information relates to a tactical plan of an emergency response provider and is 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. Therefore, with the exception of the information we have marked for release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.² However, we find both the department and the county have failed to demonstrate the information we have marked for release relates to staffing requirements or a tactical plan of an emergency response provider, or consists of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

The county argues the remaining information is confidential under sections 418.177 and 418.181 of the Government Code. Upon review, we find the county has failed to demonstrate the remaining information relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity or identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 or section 418.181 of the Government Code.

In summary, with the exception of the information we have marked for release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department 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.

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 695035

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)