



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 21, 2018

Mr. John S. Schneider  
First Assistant City Attorney  
City of Pasadena  
P.O. Box 672  
Pasadena, Texas 77501-0672

OR2018-04132

Dear Mr. Schneider:

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# 696582 (City ID# SL1780).

The City of Pasadena (the "city") received a request for the City Hall visitor sign-in sheet on a specified date. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it does not consist of the requested records pertaining to the specified date. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.<sup>1</sup>

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.

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<sup>1</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

*See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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. Section 552.101 encompasses information protected by other statutes. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). You assert section 162 of title 6 of the United States Code makes the submitted information confidential.<sup>2</sup> Section 162 of title 6 of the United States Code provides, in part:

(b) Duties[.] In carrying out its mission, the [Office of Science and Technology] shall have the following duties:

...

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

6 U.S.C. § 162(b)(5). This section only provides that the Office of Science and Technology must establish a coordinated federal approach on law enforcement technology issues. It does not itself explicitly make any information confidential. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 162 of title 6 of the United States Code.

Section 552.101 of the Government Code encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act, sections 418.176

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<sup>2</sup>Although you cite to the Homeland Security Act of 2002, Public Law number 107-296, we note this provision was codified at title 6 of section 162 of the United States Code.

through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176(a) provides:

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 staffing requirements of an emergency response provider, including 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.

Gov't Code § 418.176(a). Section 418.177 provides:

Information is confidential if the information:

- (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).

Upon review, we find the city failed to establish any of the remaining information was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Thus, the city has not established any of the remaining information is confidential under section 418.176(a) of the Government Code. *See id.* § 418.176(a). Additionally, we find the city failed to establish any of the remaining information was collected, assembled, or is maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Thus, the city has not established any of the remaining information is confidential under section 418.177 of the Government Code. *See id.* § 418.177. Further, we find the city failed to establish any portion of the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, the city has not established any of the remaining information is confidential under section 418.181 of the Government Code. Gov't Code § 418.181. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176, section 418.177, or section 418.181 of the Government Code.

We understand you to raise section 552.101 of the Government Code in conjunction with section 421.001 of the Government Code. Section 421.001 defines the terms "agency," "critical infrastructure," and "intelligence." *See id.* § 421.001(1), (2), (4). You generally assert this section makes the submitted information confidential. However, this section only defines certain terms and does not make any information confidential. *See* ORDs 658 at 4, 478 at 2, 465 at 4-5. Thus, none of the remaining information is confidential under section 421.001. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 421.001 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with sections 421.002 and 421.061 of the Government Code. You quote the following portions of section 421.002:

- (a) The governor shall direct homeland security in this state and shall develop a statewide homeland security strategy that improves the state's ability to:

(1) protect against homeland security threats and hazards; [and]

...

(5) prevent significant criminal and terrorist attacks.

(b) The governor's homeland security strategy shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and must include specific plans for:

...

(6) detecting, deterring, and defending against terrorism, including cyber-terrorism and biological, chemical, and nuclear terrorism;

(7) positioning equipment, technology, and personnel to improve the state's ability to respond to a homeland security emergency; [and]

...

(9) using technological resources to:

(A) facilitate the interoperability of government technological resources, including data, networks, and applications; [and]

...

(D) improve the security of governmental and private sector information technology and information resources.

*See Gov't Code § 421.002(a), (b).* You also quote section 421.061(a), which provides the following, in part:

An officer or employee of a state or local agency performing a homeland security activity or a volunteer performing a homeland security activity at the request or under the direction of an officer or employee of a state or local agency is considered for purposes of Section 437.222 to be a member of the Texas military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if:

(1) the officer, employee, or volunteer is performing the homeland security activity under procedures prescribed or circumstances

described for the purpose of this section in the governor's homeland security strategy[.]

*See id.* § 421.061(a)(1). Section 421.002 provides the elements that must be addressed by the governor's homeland security strategy. Section 421.061(a) details when an individual is considered to be performing a homeland security activity under the governor's homeland security strategy for civil liability purposes. These provisions do not themselves explicitly make any information confidential. *See* ORDs 658 at 4, 478 at 2, 465 at 4-5. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 421.002 or section 421.061 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find the city failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *State of Texas v. Alfaro*, Cause No. 2229552, was pending in the Pasadena Municipal Court at the time the city received the instant request for information. However, we note the city is not a party to the litigation and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from a governmental body with a litigation interest that it seeks to withhold the information at issue pursuant to section 552.103. Thus, we find you have failed to establish the city was a party to pending litigation on the date the city received this request for information. Accordingly, none of the remaining information may be withheld under section 552.103 of the Government Code.

In summary, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>3</sup>

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/>

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<sup>3</sup>We note the information being released in this instance includes the requestor's motor vehicle record information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, if the city receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the requestor's motor vehicle record information.

[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 M. Graham  
Attorney  
Open Records Division

JMG/eb

Ref: ID# 696582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)