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Mr. Ricardo R. Lopez
Counsel for the North East Independent School District
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845 Proton Road
San Antonio, Texas 78258

OR2019-08914

Dear Mr. Lopez:

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# 757764.

The North East Independent School District (the "district"), which you represent, received a request for crisis safety plans for the district and a specified middle school. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. Section 552.101 encompasses information protected by other statutes, such as section 37.108 of the Education Code, which provides, in part:

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a comparable public or private entity.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

(c-2) A document relating to a school district's or public junior college district's multihazard emergency operations plan is subject to disclosure if the document enables a person to:

(1) verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments[.]

Educ. Code § 37.108(b), (c-1), (c-2)(1). You inform us the submitted information was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b). We note, however, some of the submitted information is subject to section 37.108(c-2) because it would enable a person to verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments. *See id.* § 37.108(c-2)(1). Accordingly, this information is not subject to section 37.108(c-1) of the Education Code and the district may not withhold it under section 552.101 on that basis. However, the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.¹

You claim the information subject to section 37.108(c-2) is excepted from disclosure under the Texas Homeland Security Act (the "HSA"). Section 552.101 of the Government Code also encompasses information protected by chapter 418 of the Government Code. As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. 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.

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Gov't Code § 418.177. 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 state the information at issue relates "to the prevention, detection, and investigation of acts of bioterrorism, bomb threats, explosions, and violence, such as active shooters." You also state the release of the information at issue would allow terrorists and other criminals to "make use of that information to better inflict more casualties and greater damage" against property of the district. Based upon your representations and our review, we find the information subject to section 37.108(c-2) of the Education Code relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by the district for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the district must generally withhold the information subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Thus, there is a conflict between the confidentiality provided under section 418.177 of the Government Code the information made public by section 37.108(c-2) for the information at issue. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 418.177 generally pertains to information which was collected, assembled, or is maintained by or for the district 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. However, section 37.108(c-2)(1) specifically provides access to information that would enable a person to verify the information described in this section. Therefore, we find section 37.108(c-2)(1) of the Education Code is more specific than, and prevails over, the general confidentiality provided under section 418.177 of the Government Code. Additionally, we note section 37.108 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Thus, the district may not withhold any portion of the

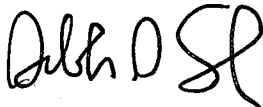
submitted information which is subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Accordingly, this information must be released pursuant to section 37.108(c-2) of the Education Code.

In summary, the district must withhold the information not subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The information subject to section 37.108(c-2) of the Education Code must be released.

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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 757764

Enc. Submitted documents

c: Requestor
(w/o enclosures)