



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Ms. Valerie A. Carrillo
Counsel for the Forth Worth Independent School District
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2019-10585

Dear Ms. Carrillo:

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# 760579 (PIR# W002567).

The Fort Worth Independent School District (the "district") received a request for a specified insurance policy. You state you have redacted certain information subject to section 552.136(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the insurance policy provider of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also received and

¹Section 552.136(c) of the Government Code allows a government body to redact the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the insurance policy provider. Thus, we have no basis to conclude the insurance policy provider has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest the insurance policy provider may have in the 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. This exception encompasses information that is made confidential by other statutes. You raise section 552.101 in conjunction with sections 418.176, 418.177, and 418.181 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. 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; [or]

(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)(1)-(3). 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 be related to a governmental body's security concerns or emergency preparedness does not make such information *per se* confidential under the HSA. *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 HSA 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 seek to withhold the submitted insurance policy under section 418.176, 418.177, or 418.181 of the HSA. However, upon review, we find the district has not demonstrated the applicability of section 418.176, section 418.177, or section 418.181 to the submitted information. Thus the district has not established any portion of the submitted information is confidential on those bases. Accordingly, the district may not withhold any of the submitted 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. Accordingly, the district must release the submitted 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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large initial "E" and a stylized "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 760579

Enc. Submitted documents

c: Requestor
(w/o enclosures)