KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Ms. Becky N. Rangel
Legal Services Specialist
Humble Independent School District
10203 Birchridge Drive
Humble, Texas 77338

OR2019-15619

Dear Ms. Rangel:

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# 770123 (#030719-01).

The Humble Independent School District (the "district") received a request for several categories of information involving the district and a named company.[1] You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

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[1]You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

[2]We assume 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 those records contain substantially different types of information than that submitted to this office.

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 418.182 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)(l)-(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 418.182 provides, in relevant part,

> (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the 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 state the submitted information pertains to the district's social media and internet geo-fencing monitoring and is used to assess risks and vulnerabilities, detect potentially dangerous activities, and prevent them. You explain the information at issue indicates exactly how the district monitors potential threats, includes specific alert terms, and reflects the district's responses. You argue release of the information at issue would pose a security risk to the district. Upon review, we find a portion of the submitted information was collected, assembled, or maintained by a governmental entity 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 and property to an act of terrorism or related criminal activity. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.[3] However, upon review, we find the district has not demonstrated the applicability of section 418.176, section 418.177, or section 418.182 to the remaining submitted information. Thus the district has not established any portion of the remaining information is confidential on those bases. Accordingly, the district 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 418.182 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Upon review, you have not demonstrated the remaining information at issue pertains a specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2). Therefore, the district may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The remaining information 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,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

PS/be

Ref: ID# 770123

Enc. Submitted documents

c: Requestor
(w/o enclosures)