



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2019

Mr. Brian Sears
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2019-23761

Dear Mr. Sears:

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# 782699 (PIR# 19-2435).

The Texas Department of Public Safety (the "department") received a request for five categories of information relating to security for a named state official during a specified time period. You indicate the department is withholding information pursuant to Open Records Letter No. 2010-12863 (2010).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

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

¹Open Records Letter No. 2010-12863 is a previous determination to the department authorizing it to withhold personnel records of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755(b) of the Government Code without the necessity of requesting an attorney general decision, unless the exceptions to confidentiality listed in subsections 411.00755(b)(1)-(12) or the release provisions listed in subsection 411.00755(c) are applicable.

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

decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (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 418.176(a) of the Government Code provides the following:

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.

Id. § 418.176(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).

The submitted information relates to the security detail of a state official provided by the department. You state the information at issue was created and maintained for the purpose of preventing, detecting, or investigating acts of terrorism or related criminal activity. The department also states the information at issue, if released, would provide terrorists and other criminals with information concerning vulnerabilities and enforcement techniques. Upon review, we find the information at issue relates to the staffing requirements or tactical plan of an emergency response provider that was collected, assembled, or maintained for the purpose of responding to an act of terrorism or related activity. *See id.* § 418.176(a)(1)-(2). In addition, we find the submitted telephone numbers were collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). Accordingly, 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.³

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 782699

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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