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ATTORNEY GENERAL OF TEXAS

September 20, 2019

Mr. Joseph Behnke
Assistant General Counsel and
Office of the Governor Greg Abbott
P.O. Box 12428
Austin, Texas 78711

OR2019-26342

Dear Mr. Behnke:

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# 787224 (OOG ID# 272-19).

The Office of the Governor (the "governor's office") received a request for all applicants to the Nonprofit Security Grant Program ("NGSP") during a certain time period. You state the governor's office has released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of multiple third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released.¹ *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 received comments from a representative of one third party. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the requestor's contention that information believed to be similar or identical to the submitted information has already been made public. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open

¹ As of the date of this letter, we have not received comments from any of the remaining third parties.

Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We note the requestor does not state the information released to the public is identical to the submitted information. Further, we have no indication the information at issue has been released in its exact form to any members of the public. Accordingly, we find section 552.007 of the Government Code is inapplicable to the information at issue.

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. 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 certain information related to terrorism confidential. Section 418.177 of the Government Code provides 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. The fact that information may generally be related to emergency preparedness 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). Moreover, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under the HSA must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).


You explain the NGSP is a grant program issued by the Federal Emergency Management Agency's Grant Program Directorate to provide funding support for physical security enhancements and other security related activities to nonprofit organizations with a high

risk of terrorist attack. You state the information at issue “relates to an assessment for the [governor’s office] of the risk or vulnerability of nonprofit organizations to an act of terrorism or related criminal activity.” You assert a list of applicants who have not been awarded funds constitutes a list of self-identified high risk targets with security vulnerabilities that have not yet been addressed through NGSP. Upon review, we find the information at issue 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 governor’s office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.² The governor’s office must release the remaining 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 <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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 787224

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.