



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Ms. Captoria Brown
Senior Paralegal
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR2019-26531

Dear Ms. Brown:

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# 787149 (City ID# 16705).

The City of Carrollton (the "city") received a request for four categories of information pertaining to specified city police department (the "department") polices and training records.¹ You claim some of 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. This exception encompasses information made confidential by other

¹ We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See Id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the city's violation of section 552.301 in requesting this decision.

statutes. You raise section 552.101 in conjunction with sections 418.176 and 418.177 of the Government Code for information you have marked in the submitted information. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.176 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 staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176. Section 418.177 provides as follows:

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.

Id. § 418.177. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You argue some of the submitted information relates to the tactical plans of the department. We understand release of the information at issue would reveal specific details about the available weapons for use in responding to criminal incidents. Upon review, we find some

of the information relates to a tactical plan used by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.² However, upon review, we find no portion of the remaining information at issue is confidential pursuant to section 418.176 of the Government Code, and the city may not withhold the remaining information you marked under section 552.101 of the Government Code on that basis.

You also argue the remaining information you marked relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Upon review, we find you have not demonstrated any of the information at issue is confidential pursuant to section 418.177 of the Government Code and the city may not withhold the remaining information you marked under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You assert portions of the remaining information are excepted from disclosure under common-law privacy. Upon review, we find the remaining information is either not highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city 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.

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

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/jxd

Ref: ID# 787149

Enc. Submitted documents

c: Requestor
(w/o enclosures)