



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Mr. Graylon Wells  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2019-27865

Dear Mr. Wells:

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# 789393 (ORR# 19PIA0560).

The Harris County Sheriff's Office (the "sheriff's office") received a request for records used by the sheriff's office to track and compare calls for service in patrol districts. The sheriff's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception the sheriff's office claims and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from public 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. The sheriff's office raises section 552.101 in conjunction with section 418.176 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:

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<sup>1</sup> The sheriff's office acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception the sheriff's office claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup> 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.

(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;

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

*Id.* § 418.176(a)(1)-(2). Section 418.177 provides:

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 be related to a governmental body's security concerns 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).

The sheriff's office argues the submitted information is confidential under section 418.176 of the Government Code. The sheriff's office argues release of the information would allow potential criminals to anticipate staffing weaknesses. Upon review, we find the sheriff's office has demonstrated portions of the information at issue, which we marked, were collected, assembled, or maintained by or for the sheriff's office for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relate to the tactical plan or staffing requirements of an emergency response provider. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>3</sup> However, the sheriff's office has not demonstrated the remaining information was

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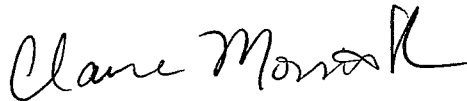
<sup>3</sup> As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

collected, assembled, or maintained by or for the sheriff's office for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to the staffing requirements of an emergency response provider or to a tactical plan of the provider. Consequently, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. Further, we find the sheriff's office has not demonstrated any of the remaining information relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Thus, the sheriff's office has not demonstrated the applicability of section 418.177 to any of the remaining information. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Therefore, the sheriff'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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 789393

Enc. Submitted documents

c: Requestor  
(w/o enclosures)