



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2019

Ms. Sandra D. Carpenter
General Counsel
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2019-28730

Dear Ms. Carpenter:

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# 791021.

The Round Rock Independent School District (the "district") received a request for four categories of information pertaining to a specified incident. You state you do not have information responsive to portions of the request.¹ You state you will release some information to the requestor. 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 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. Section 552.101 encompasses information protected by other statutes, such as section 37.108 of the Education Code, which provides, in part:

(a) Each school district or public junior college district shall adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness,

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for:

(1) training in responding to an emergency for district employees, including substitute teachers;

(2) measure to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments.

(3) measures to ensure district communications technology and infrastructure are adequate to allow communication during an emergency;

(4) if the plan applies to a school district, mandatory school drills and exercise, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;

(5) measures to ensure coordination with the Department of State Health Services and local emergency management services, law enforcement, health departments, and fire departments in the event of an emergency;

(6) the implementation of a safety and security audit as required by Subsection (b).

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a person included in the registry established by the Texas School Safety Center under Section 37.2091.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

(c-2) A document relating to a school district's or public junior college district's multihazard emergency operations plan is subject to disclosure if the document enables a person to:

(1) verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments;

...

(3) verify that the plan addresses the four phases of emergency management under Subsection (a); [and]

...

(9) if the district is a school district, verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

Act of May 27, 2019, 86th Leg., R.S., S.B. 11, § 10 (to be codified at Educ. Code § 37.108); Educ. Code § 37.108 (c-1)-(c-2)(1), (3), (9). We understand the information we have marked was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b). We note, however, some of the information at issue would enable a person to verify that: the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments; the plan addresses the five phases of emergency management under Subsection (a); and the district has established a visitor policy and identify the provisions governing access to a district building or other district property. Accordingly, this information is not subject to section 37.108(c-1) of the Education Code and the district may not withhold it under section 552.101 on that basis. However, the district must withhold the remaining portions of the information we have marked under section 552.101 of the Government Code and section 37.108(c-1) of the Education Code.

You claim some of the remaining information, including the information subject to section 37.108(c-2), is excepted from disclosure under the Texas Homeland Security Act (the "HSA"). Section 552.101 of the Government Code also encompasses the HSA. As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.176(a) provides, in relevant part, as follows:

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.

Gov't Code § 418.176(a). Section 418.182 provides, in 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 information may generally be related to emergency preparedness or a security system does not make the information *per se* confidential under section 418.176 or section 418.182. *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 confidentiality provision, a governmental body asserting section 418.176 or section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state some of the remaining information consists of portions of the district's emergency operations plan and security and staffing plans of the district's Safety and Security department. You state this information was developed to protect the public and district employees and students from acts of terrorism or related criminal activity. Upon review, we conclude some of the information at issue relates to staffing requirements and tactical plans of a law enforcement agency and is 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. Accordingly, the district must generally withhold the information we have marked, including the information subject to section 37.108(c-2) of the Education Code, under section 552.101 of the Government Code in conjunction with section 418.176

of the Government Code.² You further state some of the submitted information consists of video recordings and documents that reveal the specifications, operating procedures, and the location of a district security system. You further state the district's security system is used to protect public property from an act of terrorism or related criminal activity. Based on your representations and our review, we find some of the submitted information is related to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to specifications of security system that recorded them, and thus, are confidential under section 418.182). Accordingly, the district must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.³ However, we find you have not demonstrated any of the remaining information at issue 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. We also find you have failed to demonstrate any of the remaining information was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.176 or 418.182 of the Government Code.

Upon review, there is a conflict between the confidentiality provided under section 418.176 of the Government Code and the information made public by section 37.108(c-2) for the information at issue. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 418.176 generally pertains to information which was collected, assembled, or is maintained by or for the district for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency or relates to a tactical plan of the provider. However, section 37.108(c-2) specifically provides access to information which would enable a person to verify the information described in this section. Therefore, we find section 37.108(c-2) of the Education Code is more specific than, and prevails over, the

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

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

general confidentiality provided under section 418.176 of the Government Code. Additionally, we note section 37.108 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Thus, the district may not withhold any portion of the information subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state some of the remaining information would interfere with law enforcement or prosecution of crime. However, upon review, we find you have not demonstrated any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the district may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).⁴ *See* Gov't Code

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the district may not withhold the information at issue under section 552.117(a)(1).

In summary, except for the information subject to section 37.108(c-2) of the Education Code, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. Except for the information subject to section 37.108(c-2) of the Education Code, the district must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.182(a) of the Government Code. If the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. The district 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 791021

Enc. Submitted documents

c: Requestor
(w/o enclosures)