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ATTORNEY GENERAL OF TEXAS

November 5, 2019

Mr. Sid Pounds
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2019-31177

Dear Mr. Pounds:

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# 798232 (ORR# R005676).

The Texas Department of Insurance ("TDI") received a request for Texas State Fire Marshall documents pertaining to the production, sale, or storage of ammonium nitrate. TDI claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

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." *Id.* § 552.101. Section 552.101 encompasses section 418.178 of the Government Code, which provides as follows:

(a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

¹ 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.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

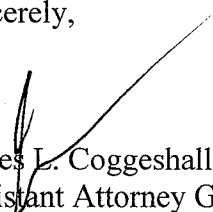
TDI argues the submitted information is confidential under section 418.178(b) because it reveals the location, quantity, and security measures relating to ammonium nitrate, which has been and may continue to be used in the construction or assembly of an explosive weapon. Upon review, we find the information we have marked is confidential under section 418.178 of the Government Code. Therefore, TDI must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. However, the remaining information does not indicate the specific locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Thus, we find TDI has failed to demonstrate the remaining information is confidential under section 418.178 of the Government Code, and TDI may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis. Accordingly, TDI 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 798232

Enc. Submitted documents

c: Requestor
(w/o enclosures)