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ATTORNEY GENERAL OF TEXAS

January 15, 2020

Mr. Darin Darby
Counsel for the Fort Worth Independent School District
Escamilla & Poneck, L.L.P.
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2020-01437

Dear Mr. Darby:

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# 806715 (Ref. No. W003253).

The Fort Worth Independent School District (the "district"), which you represent, received a request for information pertaining to district schools' evacuation plans. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the

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.

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 comparable public or private entity.
- (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; [and]

...

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

Educ. Code § 37.108(a), (b), (c-1)-(c-2)(1), (3). We understand the information at issue was developed, collected, or produced during or for 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 is subject to section 37.108(c-2) because it 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, and verify that the plan addresses the five phases of emergency management under subsection (a). *See id.* § 37.108(c-2)(1), (3). Accordingly, the information subject to section 37.108(c-2) 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 submitted information under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.²

You claim the information subject to section 37.108(c-2) of the Education Code is excepted from disclosure under the Texas Homeland Security Act (the “HSA”). Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 418.177 of the Government Code, which was added to chapter 418 of the Government Code as part of the HSA. Section 418.177 provides that 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.

Gov’t Code § 418.177. The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 (1996). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability

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

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).

You state the information at issue reveals specific details of the emergency and safety plans for responding to an act of terrorism or related criminal activity. You assert release of the information would “mitigate the [d]istrict’s use of emergency operations and training for preparing for and responding to incidents at school campuses and compromise the future safety of students and school staff.” Upon review, we find you have demonstrated 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 district must generally withhold 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 418.177 of the Government Code.

However, we find there is a conflict between the confidentiality provided under section 418.177 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 id.* § 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 418.177 generally pertains to information that 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 an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. However, section 37.108(c-2) specifically provides access to information that would enable a person to, in relevant part, 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; and the plan addresses the four phases of emergency management under subsection (a). Therefore, we find section 37.108(c-2) of the Education Code is more specific than, and prevails over, the general confidentiality provided under section 418.177 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) under section 552.101 in conjunction with section 418.177 of the Government

Code. Further, although you also assert section 552.111 of the Government Code to withhold the information subject to section 37.108(c-2), we note information specifically made public by statute may not be withheld under the general exceptions to public disclosure in the Act. *See e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Because section 552.111 is a general exception under the Act, the access under section 37.108(c-2) prevails and the district may not withhold the information at issue under section 552.111 of the Government Code.

In summary, with the exception of the information subject to section 37.108(c-2) of the Education Code, which must be released, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/rm

Ref: ID# 806715

Enc. Submitted documents

c: Requestor
(w/o enclosures)