



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2020

Mr. Robert D. Browder
Vice-President, Legal Services
Tarrant County Hospital District d/b/a JPS Health Network
1500 South Main Street
Fort Worth, Texas 76104

OR2020-16292

Dear Mr. Browder:

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# 831562.

The Tarrant County Hospital District d/b/a JPS Health Network (the "district") received a request for certain e-mails, specified information pertaining to the district, and certain information distributed among district employees. You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 section encompasses information that is made confidential by other statutes, such as the Homeland Security Act (the "HSA"). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

¹ Although you also raise section 552.108 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

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.

Id. § 418.176(a). Section 418.181 states:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body's security concerns does not make the 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).

You state the information at issue includes the district's COVID Pandemic Plan. You state the information was collected, assembled, and maintained by the district, an emergency responder, for the purpose of detecting, responding to, and investigating an infectious disease pandemic, whether naturally occurring or intentionally introduced. Further, you state the information consists of a tactical plan of response for such an event and "relate[s] to the staffing requirements, processes and material necessary to respond to such an event[.]" Upon review, we find the district has demonstrated some of the submitted information was collected, assembled, or maintained by or for the district for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to a tactical plan of the district. Accordingly, the district must withhold the information we marked under section 552.101 in conjunction with section 418.176 of the Government Code.² However, we find you have not demonstrated the applicability of section 418.176 or section 418.181 to any of the remaining information. Thus, you have not established the remaining information is confidential, and the district may not withhold the remaining information under section 552.101 of the Government Code on that basis. The district must release the remaining information.

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

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 831562

Enc. Submitted documents

c: Requestor
(w/o enclosures)