



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 30, 2020

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

OR2020-27331

Dear Ms. Alvarez:

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# 851784 (City ID# 2020-753).

The Kingsville Police Department (the "department") received a request for certain information relating to the deployment of certain personnel and department assets during a stated time period. You state some of the requested information does not exist.<sup>1</sup> You also state the department has released some information to the requestor. You claim 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 information. We have also received and considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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 information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the "HSA"),

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<sup>1</sup> The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176(a) of the Government Code provides the following:

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.

*Id.* § 418.176(a). 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 submitted information relates to a tactical plan developed by the department to prevent and respond to a potential act of terrorism or related criminal activity. You assert release of this information "could allow a terrorist or criminal to know where law enforcement personnel would be located . . . and provide the terrorist or criminal the opportunity to develop countermeasures to the law enforcement efforts thereby jeopardizing citizen and law enforcement officer safety." Based upon these representations and our review, we find the information at issue relates to the staffing requirements and tactical plan of an emergency response provider maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/be

Ref: ID# 851784

Enc. Submitted documents

c: Requestor  
(w/o enclosures)