



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2020

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-29847

Dear Ms. Tynan:

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# 855733 (OGC# 198730).

The University of Texas Medical Branch at Galveston (the "university") received a request for certain types of university policies and procedures, as well as information pertaining to the university's preparation for and actions taken in response to a specified event. You indicate the university is redacting certain information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code and certain information pursuant to section 552.136(c) of the Government Code.¹ You state the university will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

² 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.

Section 552.101 of the Government Code exempts 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 sections 418.176, 418.181, and 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.176 provides, in relevant part:

(a) 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; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(1), (2). Section 418.181 provides “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities 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 confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 you marked “relates to the [u]niversity’s tactical plan regarding its emergency response to unusual occurrences.” You also state the information at issue includes the Business Continuity and Preparation and Evacuation plans of the university’s Animal Resource Center (the “ARC”), which were “created to ensure the ARC was prepared to respond to emergency situations including hurricane or other natural disasters or acts of terrorism, and outline[] both emergency procedures and steps to ensure the ARC effectively operates during an emergency[.]” Further, you assert release of the information at issue “could alert a criminal or terrorist to potential vulnerabilities within the [u]niversity and the ARC and provide such individuals with the information required to circumvent these procedures, causing further damage to the [u]niversity[.]” as well as the university’s employees and students. Upon review, we find you have demonstrated the information you marked relates to the tactical plans of the university 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 university must withhold

the information you marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.³

You state the information you marked consists of information pertaining to university buildings. You assert, and we agree, the buildings at issue are critical infrastructure. *See generally id.* § 421.001 (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). You assert release of this information “would make the facilit[ies] at issue vulnerable to possible attacks on [these] critical infrastructure building[s,]” and “could provide criminals or terrorists with critical information on how to infiltrate and debilitate the facilit[ies] at issue[.]” Based on your arguments and our review, we find you have demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of the university’s critical infrastructure to an act of terrorism. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁴

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state release of some of the remaining information would subject university employees to a substantial threat of physical harm. Upon review, we find you have demonstrated release of the information at issue would subject an employee to a substantial threat of physical harm. Accordingly, the university must withhold the information you marked under section 552.152 of the Government Code.⁵

In summary, the university must withhold: (1) the information you marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (2) the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; and (3) the information you marked under section 552.152 of the Government Code. The university must release the remaining information.

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

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 855733

Enc. Submitted documents

c: Requestor
(w/o enclosures)