



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Mr. Luis F. Calvo  
Counsel for the El Paso Independent School District  
Scott & Hulse, P.C.  
201 East Main Drive, Suite 1100  
El Paso, Texas 79901

OR2020-32104

Dear Mr. Calvo:

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# 860379 (PIR# W002793).

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to phone calls of the district's police department on a specified date. You argue some of the submitted information is not subject to the Act. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) of the Government Code reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

*Id.* § 552.002(a-1). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You explain some of the information at issue consists of personal phone calls between a district employee and individuals related to personal matters and does not relate to the transaction of official business of the district. We understand use of the district's resources to create and maintain the information at issue was *de minimis*. See Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based upon these representations and our review, we conclude some of the information at issue does not constitute public information for purposes of section 552.002 of the Government Code. Accordingly, the information we indicated is not subject to the Act, and the authority is not required to release it in response to the request.<sup>1</sup> However, upon review, we find the remaining information at issue relates to the transaction of official business of the authority. Thus, we find the remaining information is subject to the Act, and the district must release it unless it falls within an exception to public disclosure under the Act. See Gov't Code §§ 552.006, .021, .301, .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *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 section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *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 consists of telephone recordings concerning the status of the alarm system at district schools. You state the information at issue reveals the location and status of the alarm system. You state the alarm system is used to protect public and private property from acts of terrorism or related criminal activity. Based on your representations and our review, we conclude some of the information at issue is related to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to specifications of security system that recorded them, and thus, are confidential under section 418.182). Accordingly, the district must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, we find the district has failed to demonstrate any portion of the remaining information at issue consists of information that is confidential under section 418.182 of the Government Code. Accordingly, the district may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984). Upon review, we find the district has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the district may not withhold any of the remaining

information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the district must withhold the license plate numbers in the remaining recordings under section 552.130 of the Government Code. However, we find you failed to demonstrate any of the remaining information is subject to section 552.130. Therefore, the district may not withhold any of the remaining information under section 552.130.

In summary, the information we indicated is not subject to the Act, and the district is not required to release it in response to the request. The district must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The district must withhold the license plate numbers in the remaining recordings under section 552.130 of the Government Code. The district 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 860379

Enc. Submitted documents

c: Requestor  
(w/o enclosures)