



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Mr. Neil Bonavita
Attorney
Fort Worth Independent School District
100 North University Drive, Suite SW172
Fort Worth, Texas 76107

OR2022-00531

Dear Mr. Bonavita:

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# 923978 (PIR# W004644).

The Fort Worth Independent School District (the "district") received a request for five categories of information pertaining to cyber and ransomware attacks. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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." 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 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) measures 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 for communication during an emergency;

(4) if the plan applies to a school district, mandatory school drills and exercises, 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 agencies, law enforcement, health departments, and fire departments in the event of an emergency; and

(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 person included in the registry established by the Texas School Safety Center under Section 37.2091.

...

(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;

(2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;

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

Educ. Code § 37.108(a), (b), (c-1), (c-2)(1)-(3). The district indicates the submitted information at issue was developed, collected, or produced during or for a safety and security audit and we understand the audit was conducted under section 37.108(b). *See id.* § 37.108(b). Thus, the submitted information is generally confidential under section 37.108(c-1) of the Education Code. We note, however, some of the submitted information would enable a person to verify the information described in section 37.108(c-2). Thus, this information is not subject to section 37.108(c-1) of the Education Code and may not be withheld under section 552.101 of the Government Code on that basis. However, the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.¹

The district claims the information subject to section 37.108(c-2) is excepted from disclosure under the Texas Homeland Security Act (the "HSA"). Section 552.101 of the Government Code also encompasses information protected by chapter 418 of the Government Code. As part of the HSA, 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 418.181 of the Government Code provides the following:

Those 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.

Gov't Code § 418.181; *see also id.* § 421.001(2) (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). 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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The district argues the information subject to section 37.108(c-2) of the Education Code identifies “technical details or particular vulnerabilities of critical infrastructure designed to help alert or avoid an act of terrorism, disaster, or assault on [d]istrict schools.” We agree the campus school is critical infrastructure for purposes of section 418.181 of the Government Code. Upon review, we find the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, 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 418.181 of the Government Code.

Thus, there is a conflict between the confidentiality provided under section 418.181 of the Government Code and the information made public by section 37.108(c-2). 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 418.181 generally pertains to information which would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. However, sections 37.108(c-2) specifically provides access to information that would enable a person to verify the information described in this section. 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 418.181 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 subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 418.181 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 and 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jm

Ref: ID# 923978

Enc. Submitted documents

c: Requestor
(w/o enclosures)