



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2022

Mr. Sean Hoffman
Chief Communications Officer
Seguin Independent School District
1221 E. Kingsbury Street
Seguin, Texas 78155

OR2022-04692

Dear Mr. Hoffman:

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# 930506.

Seguin Independent School District (the "district") received a request for the Emergency Operations Procedure for the district and a specified district campus. 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 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);

...

(6) if the district is a school district, verify that the district has established a plan for responding to a train derailment if required under Subsection (d)[.]

...

Educ. Code § 37.108(a), (b), (c-1), (c-2)(1)-(3), (6). The submitted information includes the district’s Multi-Hazard Emergency Operations Plan (the “operations plan”). We understand the information at issue was developed, collected, or produced during or for a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b); *see also id.* § 12.104 (b)(3)(U) (open-enrollment charter schools subject to requirements of Educ. Code § 37.108). We note, however, some of the information at issue 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, we find the district must withhold the rest of the operations plan under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.¹

We understand you to assert the remaining information, including 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 418.176(a) of the Government Code provides the following:

(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;

(2) relates to a tactical plan of the provider;

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

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a). Section 418.177 of the Government Code provides the following:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. 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 assert the information subject to section 37.108(c-2) relates to the staffing requirements or tactical plan of an emergency response provider that was collected, assembled, or maintained for the purpose of preventing, detecting, responding to and investigating an emergency, including an act of terrorism or related criminal activity. However, upon review, we find you have failed to demonstrate the remaining information at issue consists of information that is confidential under section 418.176. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

You assert the remaining information, including the information subject to section 37.108(c-2), is collected, assembled, and maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. We understand you to assert this information is part of a safety and security vulnerabilities assessment that the district is required to conduct to identify and prevent potential hazards or threats to safety. Based on your representations and our review, we agree the remaining information relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by the district for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the district must withhold the submitted school security proposal under section 552.101 of the Government Code in conjunction with section 418.177 of the

Government Code.² In addition, the district must generally withhold the information subject to section 37.108(c-2) of the Education Code in the operations plan under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Thus, there is a conflict between the confidentiality provided under section 418.177 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 418.177 generally pertains to information which was collected, assembled, or is maintained by or for the system for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. However, section 37.108(c-2) specifically provides access to information that would enable a person to verify the information described in these sections. 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 418.177 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 information subject to section 37.108(c-2) of the Education Code under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Next, we understand you to assert the information subject to section 37.108(c-2) of the Education Code is confidential under section 37.2071(i) of the Education Code. Section 552.101 also encompasses section 37.2071 of the Education Code, which provides, in relevant part:

(a) The [Texas School Safety Center] shall establish a random or need-based cycle for the center’s review and verification of school district and public junior college district multihazard emergency operations plans adopted under Section 37.108. The cycle must provide for each district’s plan to be reviewed at regular intervals as determined by the center.

...

(i) Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans under this section is not subject to disclosure under [the Act].

² As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Educ. Code § 37.2071(a), (i). Although you assert the information subject to section 37.108(c-2) is confidential pursuant to section 37.2071(i), upon review, we find you have failed to demonstrate this information was collected, developed, or produced during the review and verification of the district's operations plans by the Texas School Safety Center. Therefore, we find section 37.2071(i) of the Education Code is inapplicable to the information at issue and the district may not withhold the information at issue under section 552.101 on that basis.

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 operations plan under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The district must withhold the remaining information, which consists of the submitted school security proposal, under section 552.101 of the Government Code in conjunction with section 418.177 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 930506

Enc. Submitted documents

c: Requestor
(w/o enclosures)