



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2022

Ms. Patsy Spaw  
Secretary of the Senate  
The Senate of the State of Texas  
P.O. Box 12068  
Austin, Texas 78711

OR2022-15715

Dear Ms. Spaw:

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# 950857 (DPS PIR #22-0838, OOG PIR #152-22).

The Senate of the State of Texas (the "senate") received a request for communications in the possession of a named senator or senator's staff regarding a specified topic. You state you have released some information to the requestor. Although you take no position as to the disclosure of the submitted information, you state you have notified the Office of the Governor (the "governor's office") and the Texas Department of Public Safety (the "department") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the governor's office and the department. We have considered the submitted arguments 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." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act (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 provides, in relevant part, as follows:

- (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 any:

- (1) relates to the staffing requirements of an emergency response provider, including a 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 a pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

*Id.* § 418.176(a). Section 418.177 provides that information is confidential if it:

- (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).

The department states the submitted information involves department assessments of "threats facing persons and property from acts of terrorism and related criminal activity" and tactical plans pertaining to border operations. The department states release of the information at issue "will compromise law enforcement purposes by enabling terrorists and criminals to anticipate weakness in law enforcement procedures and alter their methods of operation in order to avoid detection and apprehension." Based upon these representations and our review, we find the submitted information relates to staffing requirements and tactical plans of emergency response providers 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), 532 (1989), 515 (1988), 252 (1980). Accordingly, the senate must withhold the submitted information

under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code.<sup>1</sup>

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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/mo

Ref: ID# 950857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.