



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2022

Mr. John W. Peeler
Counsel for the Texas Emergency Communications Center
Coveler & Peeler, P.C.
820 Gessner, Suite 1710
Houston, Texas 77024-4298

OR2022-16478

Dear Mr. Peeler:

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# 950514.

The Texas Emergency Communications Center (the "center"), which you represent, received a request for certain information pertaining to communications between the center and a specified entity. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ Additionally, you state release of some of the submitted information may implicate the interests of the Harris County Emergency Services District No. 11 (the "district"). Accordingly, you state, and provide documentation showing, the center notified the district of the request for information and of its right to submit arguments to this office. *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 district. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

¹ Although you also raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information the center holds in a non-employment capacity.

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.

decision.” *See id.* § 552.101. This section encompasses information that is made confidential by sections 418.177 and 418.181 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 418.177 of the Government Code 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. 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; *see also id.* § 421.001(2) (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”). The fact that information may generally relate to a governmental body’s security concerns does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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 statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You and the district claim some of the information at issue is confidential under sections 418.177 and 418.181 of the Government Code. You explain the information at issue reveals technical details of the dispatching operations of the center and district, which is used to assess the risk or vulnerability of the center. You assert release of the information at issue “would allow a person . . . who intends to carry out an act of terrorism or related criminal activity to exploit potential vulnerabilities and technical details of the critical infrastructure dispatching systems, thereby degrading the [center’s and the district’s] ability to respond[.]” Based on these representations and our review, we find some of the information at issue was 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 relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Accordingly, the center must withhold the information we have marked under section 552.101 of the Government Code

in conjunction with section 418.177 of the Government Code.³ However, we find you and the district have failed to demonstrate the remaining information at issue consists of information that is confidential under either section 418.177 or 418.181 of the Government Code. Therefore, the center may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with either section 418.177 or section 418.181.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). You assert some of the remaining information is made confidential by section 773.091. Upon review, we find no portion of the information at issue consists of communications between certified EMS personnel providing medical supervision and patients that were made in the course of providing EMS to the patients. *See id.* § 773.091(a). Furthermore, the information at issue does not consist of records of the identity, evaluation, or treatment of patients by EMS personnel providing medical supervision that were created by the EMS personnel or maintained by an EMS provider. *See id.* § 773.091(b). Therefore, we find section 773.091 does not apply to any portion of the information at issue, and the center may not withhold any portion of it under section 552.101 of the Government Code on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information

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

confidential. Gov't Code § 552.1175. We note "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175 applies, in part, to "[EMS] personnel as defined by Section 773.003 of the Health and Safety Code, regardless of whether the [EMS] personnel complies with section 552.024 or 552.1175, as applicable[.]" *Id.* § 552.1175(a)(18). Some of the remaining information, which we have marked, pertains to an individual subject to section 552.1175(a)(18). Accordingly, to the extent the information we have marked consists of family member information subject to section 552.1175 of the Government Code and pertains to an individual who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the center must withhold the information we have marked under section 552.1175 of the Government Code. *See cf. id.* § 552.117(c). Conversely, if the information at issue does not consist of family member information subject to section 552.1175 or the individual does not elect to restrict access to the information in accordance with section 552.1175(b), then the center may not withhold information we marked under section 552.1175. Moreover, the remaining information at issue does not consist of the home address, home telephone number, emergency contact information, date of birth, social security number, or family member information pertaining to an individual subject to section 552.1175(a)(18), and such information may not be withheld under section 552.1175.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find some of the information at issue, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the information pertains to an individual who may be de-identified by our marking under section 552.1175 of the Government Code. To the extent the individual is de-identified by our marking under section 552.1175, this individual's privacy interests are protected, and the center may not withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Accordingly, if the individual whose information is at issue is not de-identified by our marking under section 552.1175 of the Government Code, then the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. To the extent the information we have marked consists of family member information subject to section 552.1175 of the Government Code and pertains to an

individual who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the center must withhold the information we have marked under section 552.1175 of the Government Code. If the individual whose information is at issue is not de-identified by our marking under section 552.1175 of the Government Code, then the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The center 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 950514

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 1 Third Party
(w/o enclosures)