KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Ms. Leandra Costilla Ortiz
Counsel for the Excellence in Leadership Academy
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OR2022-19506

Dear Ms. Ortiz:

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# 957977.

The Excellence in Leadership Academy (the "academy"), which you represent, received a request for: (1) the academy's lease agreement for the last three years, including information regarding monthly costs and maintenance; (2) information regarding certain drills conducted by the academy during a stated time period; (3) payroll information for a stated position, including scheduled hours and benefits; and (4) the academy's policy manual. You state the academy will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 mitigation, preparedness, response, and recovery as defined by the commissioner of education or commissioner of higher education in conjunction with the governor's office of homeland security. The plan must provide for:

> (1) district employee training in responding to an emergency;
>
> (2) if the plan applies to a school district, mandatory school drills and exercises to prepare district students and employees for responding to an emergency;
>
> (3) 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
>
> (4) 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 comparable public or private entity.
>
> (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; [and]
> >
> > . . .
> >
> > (5) verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills[.]

Educ. Code § 37.108(a)-(b), (c-1), (c-2)(1), (5). We understand the submitted information was developed, collected, or produced during 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). 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 some of the information described in section 37.108(c-2). Therefore, 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 academy 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]

You claim 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:

> 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; or
> >
> > (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. Section 418.182 of the Government Code provides, in relevant part, the following:

> (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that

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

> relates to the specifications, operating procedures, or location of a security 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 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 state the information at issue details the academy's plans for "preventing, detecting, or responding to, or investigating an act of terrorism or related criminal activity." You also state the information at issue contains "detailed assessment[s] of the [academy's] risk or vulnerability to an act of terrorism or related activity that was done for and maintained by the [academy]." Based upon your representations and our review, we find the information subject to section 37.108(c-2) of the Education Code 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 academy for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the academy 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 418.177 of the Government Code. Upon review, however, we find you have failed to demonstrate the information subject to section 37.108(c-2) consists of information that is confidential under section 418.176. Therefore, the academy 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. In addition, we find you have failed to demonstrate the information subject to section 37.108(c-2) consists of 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 system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find you have failed to demonstrate the applicability of section 418.182(a) to the information at issue, and the academy may not withhold it under section 552.101 with on that basis.

Nonetheless, we find 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. 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 academy 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. Therefore, this information must be released pursuant to section 37.108(c-2) of the Education 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 academy 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 957977

Enc. Submitted documents

c: Requestor
(w/o enclosures)