



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2022

Mr. Nico Arias
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-22136

Dear Mr. Arias:

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# 959667 (Ref. No. P0006361-042222).

The City of Fort Worth (the "city") received a request for specified training materials used by the city's police department. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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." *Id.* § 552.101. This exception encompasses information that is made confidential by other statutes. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA.² Section 418.176(a) of the HSA provides in relevant part:

¹ We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

² Although you do not cite to section 418.176 of the Government Code in your brief, we understand you to raise section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code based on the substance of your arguments.

(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 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 pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

Id. § 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 measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 (1996). 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 submitted information relates to city police department "procedures on how to respond to various highly sensitive and dangerous situations." You also state release of this information "will jeopardize the lives of police officers, citizens, and other individuals in the [c]ity." Upon review, we find some of the information at issue was collected, assembled, or maintained by a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to a tactical plan of the provider. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue was collected, assembled, or maintained by a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal

activity and relates to staffing requirements or a tactical plan of an emergency response provider or to an assessment by or for a governmental entity of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176 or 418.177 of the Government Code. Accordingly, the city 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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 959667

Enc. Submitted documents

c: Requestor
(w/o enclosures)