



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2022

Ms. Amber Wodraska  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2022-25762

Dear Ms. Wodraska:

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# 968144 (OGC# 0431-06-2022).

The Texas Department of Criminal Justice (the "department") received a request for a specified policy. 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.

Initially, you claim "a nearly substantively identical policy" to the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-17735 (2017). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note the submitted information was created after the date the department received the request for information at issue in the prior ruling. Therefore, the submitted information is not the subject of the prior ruling and the department may not withhold it under Open Records Letter No. 2017-17735. Accordingly, we will consider your argument against disclosure of this 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. This exception encompasses information that other

statutes make confidential. You raise section 552.101 in conjunction with section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 provides in relevant part:

(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; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). The fact that information may be related to a governmental body’s security concerns, emergency preparedness, or security system does not make such information *per se* confidential under 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 assert the submitted information relates to the department’s operational and tactical plan. You state release of the information at issue may allow an inmate to “gain insight into law enforcement security procedures and tactical plans and ultimately undermine the safety of the unit.” Upon review, we find some of the information at issue relates to the staffing requirements or tactical plan of a law enforcement agency and is 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. Therefore, the department must withhold the information we have 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 relates to staffing requirements or a tactical plan of an emergency response provider that was collected, assembled, or maintained by or for the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. As you raise no further exceptions to disclosure, the department 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 968144

Enc. Submitted documents

c: Requestor  
(w/o enclosures)