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ATTORNEY GENERAL OF TEXAS

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Ms. Kacey Villafuerte
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OR2022-27381

Dear Ms. Villafuerte:

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# 968190.

The Uvalde Consolidated Independent School District (the "district"), which you represent, received a request for the district's security drill training log for all district schools during a certain time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim 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." 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 prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for:

(1) training in responding to an emergency for district employees, including substitute teachers;

(2) measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;

(3) measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;

(4) if the plan applies to a school district, mandatory school drills and exercises, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;

(5) 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

(6) 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 person included in the registry established by the Texas School Safety Center under Section 37.2091.

...

(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:

...

(2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;

...

(4) verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;

(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)(2), (4), (5). The submitted information includes lockdown drill logs, lockdown drill plans, and fire drill logs for the district's schools. We understand the information at issue was developed, collected, or produced during or for 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). We note, however, some of the information at issue would enable a person to verify the information described in section 37.108(c-2). Thus, 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, we find the district must withhold the remainder of the drill logs and drill plans under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.¹

We understand you to assert the remaining information and the information subject to section 37.108(c-2), is excepted from disclosure under the Texas Homeland Security Act (the "HSA") and section 552.103 and section 552.108 of the Government Code. 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 418.177 of the Government Code provides the following:

Information is confidential if the information:

¹ As our ruling is dispositive, we need not address your arguments against disclosure of this 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.

Gov't Code § 418.177. Section 418.181 of the Government Code provides the following:

Those 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 security, governance, public health and safety, economy, or morale of state or nation). 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 assert the information at issue is collected, assembled, and maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. You further explain this information is part of a safety and security plan for responding to acts of terrorism or related criminal activity. Based on your representations and our review, we agree the information at issue 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 district for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The district must also 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.

You also assert the information subject to section 37.108(c-2) identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Upon review, we find you demonstrated the information subject to section 37.108(c-2) of the Education

Code identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the district 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 418.181 of the Government Code.

Thus, there is a conflict between the confidentiality provided under section 418.177 and section 418.181 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. Section 418.181 generally pertains to information which would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. However, section 37.108(c-2) specifically provides access to information that would enable a person to verify the information described in these sections. 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 and section 418.181 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). Although you also claim the information subject to section 37.108(c-2) is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See Open Records Decision Nos.* 623 at 3 (1994), 525 at 3 (1989). Thus, the district 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 or section 418.181 of the Government Code, section 552.103 of the Government Code, or section 552.108 of the Government 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 district must withhold the submitted drill logs and drill plans under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jxd

Ref: ID# 968190

c: Requestor