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ATTORNEY GENERAL OF TEXAS

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Mr. Ronn P. Garcia
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The Underwood Law Firm
P.O. Box 16197
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OR2022-32470

Dear Mr. Garcia:

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# 979655.

The Littlefield Independent School District (the "district"), which you represent, received a request for a specified report. 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 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:

- (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;
- (2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;
- (3) verify that the plan addresses the five phases of emergency management under Subsection (a);
- (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;
- (6) if the district is a school district, verify that the district has established a plan for responding to a train derailment if required under Subsection (d);
- (7) verify that the district has completed a safety and security audit under Subsection (b) and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district's board of trustees;
- (8) verify that the district has addressed any recommendations by the district's board of trustees for improvement of the plan and determine the district's progress within the last 12 months; and
- (9) if the district is a school district, verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

Educ. Code § 37.108(a)-(b), (c-1)-(c-2). You state 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). 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 district must withhold the remaining portions of the submitted 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) of the Education Code is excepted from disclosure under specific provisions of the Texas Homeland Security Act (the “HSA”), sections 418.175 through 418.182. Section 552.101 of the Government Code also encompasses information protected by chapter 418 of the Government Code. Section 418.175 of the Government Code provides the following:

(a) Information that relates to physically or mentally disabled individuals or other individuals with special needs and that is maintained for purposes of emergency management or disaster planning is confidential.

(b) This section applies to information in the possession of any person, including:

(1) the state, an agency of the state, a political subdivision, or an agency of a political subdivision; or

(2) an electric, telecommunications, gas, or water utility.

Gov’t Code § 418.175. 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.

Id. § 418.176(a). 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 remaining 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.

Id. § 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). Section 418.182 of the Government Code provides 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 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.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under [the Act].

(c) Information in the possession of a governmental entity that relates to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by Section 61.003, Education Code, is public information and is not excepted from required disclosure under [the Act] unless the security camera:

(1) is located in an individual personal residence for which the state provides security; or

(2) is in use for surveillance in an active criminal investigation.

Id. § 418.182. 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 contend the information subject to section 37.108(c-2) relates to physically or mentally disabled individuals or other individuals with special needs of the district that is maintained for purposes of emergency management or disaster planning. 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 418.175. Therefore, the district may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 418.175 of the Government Code.

Additionally, you contend the information subject to section 37.108(c-2) relates to the staffing requirements or tactical plan of an emergency response provider that was collected, assembled, or maintained for the purpose of preventing, detecting, responding to and investigating an emergency, including an act of terrorism or related criminal activity. Upon review, we find the information subject to section 37.108(c-2) of the Education Code is collected, assembled, or maintained by a government entity for the for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to the staffing requirements or tactical plans of an emergency response provider. Accordingly, 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 418.176 of the Government Code.

Further, you contend the information subject to section 37.108(c-2) 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 an assessment of the risks or vulnerabilities of the district's physical features, operations, policy, and procedures that the district was required to conduct. Based upon your representations and our review, we agree the information at issue relates to assessments 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 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.

Furthermore, you contend the information subject to section 37.108(c-2) identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. We understand the district schools are critical infrastructure for purposes of section 418.181 of the Government Code. Upon review, we find you have 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. Accordingly, 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.

Finally, you contend the information subject to section 37.108(c-2) reveals the specifications, operating procedures, or location of a security system used to protect district property from an act of terrorism or related criminal activity. Upon review, we find you have demonstrated the information at issue 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. Accordingly, 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 418.182 of the Government Code.

Thus, there is a conflict between the confidentiality provided under sections 418.176, 418.177, 418.181, and 418.182 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 418.176 generally pertains to information created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity that: relates to the staffing requirements of an emergency response provider; relates to the tactical plan of an emergency response provider; or consists of a list or compilation of pager or telephone numbers of an emergency response provider. 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. Section 418.182 generally pertains to information which consists of access codes and passwords or reveals the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. 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 sections 418.176, 418.177, 418.181, and 418.182 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).

Therefore, 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 418.176, section 418.177, section 418.181, or section 418.182 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 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/mo

Ref: ID# 979655

Enc. Submitted documents

c: Requestor
(w/o enclosures)