



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2022

Ms. Claire Morneau Andresen
Assistant General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090

OR2022-34154

Dear Ms. Andresen:

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# 982630 (Ref. No. 1378).

The Spring Independent School District (the "district") received a request for seven categories of information pertaining to specified topics, including certain audits and work orders.¹ You state the district does not maintain information responsive to a portion of the request.² You state the district has released some of the requested information. 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 representative sample of information.³

¹ The district states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

³ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts 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. As part of the Texas Homeland Security Act, 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 418.181 provides:

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. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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 explain the submitted information contains information related to the district’s exterior and interior doors and locking mechanisms, including their locations and repair history. You assert, and we agree, the district’s schools are critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2). You assert release of the information at issue would identify particular vulnerabilities of the critical infrastructure to an act of terrorism. Based upon these representations and our review of the information at issue, we find you have demonstrated the applicability of section 418.181 to the some of the information at issue. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁴ However, we find you have failed to demonstrate the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Therefore, we conclude the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 37.108 of the Education Code. Section 37.108 provides, in part:

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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].

Educ. Code § 37.108(b), (c-1). You assert the remaining information is confidential under section 37.108(c-1). *See id.* § 37.108(b). However, upon review, we find you have not demonstrated any of the remaining information was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 37.018(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 37.2071 of the Education Code, which provides, in relevant part:

(a) The [Texas School Safety Center] shall establish a random or need-based cycle for the center's review and verification of school district and public junior college district multihazard emergency operations plans adopted under Section 37.108. The cycle must provide for each district's plan to be reviewed at regular intervals as determined by the center.

...

(i) Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans under this section is not subject to disclosure under [the Act].

Id. § 37.2071(a), (i). Although you assert the remaining information is confidential pursuant to section 37.2071(i), upon review, we find you have failed to demonstrate this information was collected, developed, or produced during the review and verification of the district's operations plans by the Texas School Safety Center. Therefore, we find section 37.2071(i) of the Education Code is inapplicable to the information at issue and the district may not withhold any portion of the remaining information under section 552.101 on that basis.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The district 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/mo

Ref: ID# 982630

Enc. Submitted documents

c: Requestor
(w/o enclosures)