



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2022

Mr. Cody Wilbanks
Associate General Counsel & Executive Director of Legal Services
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2022-36162

Dear Mr. Wilbanks:

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# 985530 (Ref. No. R000636-081522).

The Fort Bend Independent School District (the "district") received a request for certain information pertaining to the district's safety and security audits.¹ The district states it will release some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

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:

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 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.

(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:

...

(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;

...

(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;

...

(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)(4), (7), (9). The district states the submitted information was developed, collected, or produced during or for a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b). Thus, the information at issue is generally confidential under section 37.108(c-1) of the Education Code. 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. Accordingly, with the exception of the information subject to section 37.108(c-2) of the Education Code, the district must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.³ Although the district asserts section 552.116 of the Government Code to withhold the information subject to section 37.108(c-2), we note information specifically made public by statute may not be withheld under the general exceptions to public disclosure in the Act. *See e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Because section 552.116 is a general exception under the Act, the access under section 37.108(c-2) prevails and the district may not withhold the information at issue under section 552.116 of the Government Code.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Further, upon review, we find the district has 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 information made confidential by other statutes. As part of the Texas Homeland Security Act (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 as follows:

(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 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).

The district explains the remaining information includes information related to the district’s exterior and interior doors and locking mechanisms. The district also asserts the information subject to section 37.108(c-2) identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. The district asserts, and we agree, the district’s schools are critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2). Based upon these representations and our review of the information at issue, we find the district has demonstrated the applicability of section 418.181 to the information at issue. Accordingly, the district must withhold the

information we have indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁴ 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 418.181 of the Government Code.

The district also claims the information subject to section 37.108(c-2) relates to an assessment by or for the district, or an assessment that is maintained by the district, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Upon review, we find the district has demonstrated the information at issue was collected, assembled, or maintained by the district 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 and property to 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.

However, we find 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) for the information at issue. 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 that was collected, assembled, or is maintained by or for the district 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). Thus, the district may not withhold any portion of the information subject to section 37.108(c-2) under section 552.101 in conjunction with section 418.177 or section 418.181 of the Government Code.

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

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 information we have indicated 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 information we have indicated 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# 985530

Enc. Submitted documents

c: Requestor
(w/o enclosures)