



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2022

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78207

OR2022-39652

Dear Mr. Kopp:

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# 988424 (File No. W361396).

The City of San Antonio (the "city") received a request for specified standard operating procedures. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. This section encompasses information protected by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.176 of the Government Code provides:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

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<sup>1</sup> We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, as section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .305, .352.

<sup>2</sup> 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.

detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a 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 generally be related to emergency preparedness does not make the 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 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 relates to information “maintained to prevent, detect, respond to, and investigate an act of criminal activity or terrorism.” You further state that release of the information “could compromise the ability of the fire and police department to respond to incidents, by suggesting which types of incidents have specific, advance action plans.” Upon review, we find you have demonstrated portions of the submitted information is collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to staffing requirements of an emergency response provider or relates to a tactical plan of the provider. Therefore, we conclude the city must withhold the information we 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 or relates to an assessment by or for a governmental entity 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 city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/pt

Ref: ID# 988424

Enc. Submitted documents

c: Requestor  
(w/o enclosures)