



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 14, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
5806 North Lamar Boulevard, Box 4087
Austin, Texas 78773-0001

OR2003-5678

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185304.

The Texas Department of Public Safety (the "department") received a request for "a Hazard/Vulnerability/Risk Analysis for the state of Texas." You state that some responsive information has been released to the requestor. You claim that portions of the requested information are exempted from disclosure under sections 552.108 and 418.177 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 exempts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision."² This section encompasses information protected by other statutes. The Seventy-eighth Legislature recently added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions

¹We note that you no longer seek to withhold a portion of the submitted information, which you have identified as "Radiological Hazards," and state that this information will be released to the requestor. Thus this ruling does not address that information.

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

make certain information related to terrorism confidential. House Bill 9 which became effective on June 22, 2003, provides in relevant part:

**Sec. 418.177. CONFIDENTIALITY OF CERTAIN INFORMATION
RELATING TO RISK OR VULNERABILITY ASSESSMENT.**

Information is confidential if the 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.

Act of June 2, 2003, 78th Leg., R.S., H.B. 9, § 3 (to be codified at Gov't Code § 418.177). You indicate that the information entitled "Terrorism Risk Assessment" consists of "an analysis of reports from jurisdictions throughout the state regarding potential targets or terrorist activities and the specific vulnerability of various sites to the potential use of Weapons of Mass Destruction." You further state that release of this information "would interfere with ongoing efforts by local, state and federal authorities to protect the general population by ensuring the security of critical elements of this state's transportation, communication and utilities systems." After reviewing your arguments and the submitted documentation, we conclude that the information entitled "Terrorism Risk Assessment" is a risk or vulnerability assessment that is made confidential under section 418.177 of the Government Code. Accordingly, the information at issue must be withheld from disclosure under section 552.101 of the Government Code. Because we are able to make a determination under section 418.177, we need not address the applicability of your other claimed exception to disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

Ms. Pamela Smith - Page 4

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 185304

Enc. Submitted documents

c: Mr. Kenneth Koehn
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