



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2007

Ms. Ylise Y. Janssen
Senior School Law Attorney
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street, Suite A-240
Austin, Texas 78703-5399

OR2007-01601

Dear Ms. Janssen:

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# 270933.

The Austin Independent School District (the "district") received a request for a specified incident report. You claim that the submitted report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 made confidential by other statutes. You assert the submitted information is confidential under specific provisions of the Texas Homeland Security Act, sections 418.176, 418.177, and 418.181 of the Government Code. Section 418.176 provides in relevant part:

(a) 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; [or]

(2) relates to a tactical plan of the provider[.]

Section 418.177 provides:

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.

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.

Gov't Code §§ 418.176, .177, .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 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 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).

Upon review, we find that you have not demonstrated that any of the submitted information is confidential under the provisions of the Texas Homeland Security Act. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). In this instance, the submitted report is an investigation of suspicious activity at a district school that you argue was identified as potentially related to terrorism or related criminal activity. Although you state the district is an emergency response provider, the report does not relate to staffing requirements or a tactical plan of the district. *See* Gov't Code § 418.176(a). Neither does the report relate to an assessment of a risk or vulnerability of persons or

property to an act of terrorism or related criminal activity. *See id.* § 418.177(a). Thus, none of the submitted information is confidential under sections 418.176 and 418.177 of the Government Code. Further, the department does not adequately explain, and the submitted incident report does not reflect, how it identifies technical details of vulnerabilities of critical infrastructure to an act of terrorism. *See Gov't Code* § 418.181. Thus, none of the submitted information is confidential under section 418.181 of the Government Code. We therefore determine that the submitted information is not confidential under the Texas Homeland Security Act and may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some medical information or information indicating disabilities or specific illnesses is protected under common-law privacy. Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have also determined that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and have found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Upon review, we find that some of the submitted information is protected by common-law privacy. We note, however, that the requestor is an agent for the insurer of the suspect in the report, the individual whose privacy interests are implicated in the submitted information. As such, the requestor may have a right of access to this information as the insured's authorized representative. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, we rule conditionally. To the extent the requestor has a right of access under section 552.023 to the marked private information, the district must release that information. To the extent the requestor does not have a right of access under section 552.023 to the private information, the district must withhold that information under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this

state [or] a motor vehicle title or registration issued by an agency of this state.”¹ Gov’t Code § 552.130. The Texas motor vehicle record information we have marked must be withheld from public disclosure under section 552.130. However, if the requestor is the authorized representative of the suspect, then the suspect’s Texas motor vehicle information must be released to the requestor. *See id.* § 552.023; ORD 481 at 4.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy and section 552.130 of the Government Code. However, to the extent the requestor is the authorized representative of the suspect in the submitted incident report, the suspect’s marked information must be released to the requestor. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

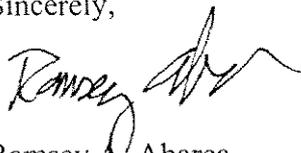
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 270933

Enc. Submitted documents

c: Mr. Joel Riffie
Austin Claims Office
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Austin, Texas 78731
(w/o enclosures)