



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2007

Mr. Philip D. Fraissinet  
Bracewell & Giuliani LLP  
711 Louisiana Street Suite 2300  
Houston, Texas 77002-2770

OR2007-09935

Dear Mr. Fraissinet:

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# 285804.

The Corpus Christi Independent School District (the "district"), which you represent, received a request for the district's 2006-2007 safety audit. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup>

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with sections 418.176, 418.177, and 418.182 of the Government Code. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.176 provides in part:

---

<sup>1</sup>To the extent that you have submitted a sample of the requested information, this letter ruling assumes that the submitted information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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:

...

(2) relates to a tactical plan of [an emergency response] provider[.]

*Id.* § 418.176(a)(2). Section 418.177 provides as follows:

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.

*Id.* § 418.177. Section 418.182 provides in part:

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may generally be related to emergency preparedness, a vulnerability assessment, or a security system does not make the information *per se* confidential under sections 418.176, 418.177, and 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). *As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).*

You state that the submitted documents are “tactical site audits” of district schools and are a crucial aspect of the district’s strategic plan for dealing with terrorist activity or related criminal acts. You contend that these documents are confidential in their entirety under sections 418.176, 418.177, and 418.182. You also seek to withhold the specific portions of the documents that you have highlighted on the basis of these sections. Having considered

your arguments and reviewed the submitted information, we conclude that you have sufficiently shown that section 418.177 is applicable to most of the highlighted information. Therefore, with the exception of the information that we have marked for release, the district must withhold the highlighted information under section 552.101 in conjunction with section 418.177. You have not adequately demonstrated, however, that any of the remaining information at issue is related to either the prevention, detection, or investigation of or an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177(1)-(2). We therefore conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177.

With respect to your remaining claims, we note that section 418.176(a)(2) is applicable only to a tactical plan of an emergency response provider. *See id.* § 418.176(a)(1)-(3). You do not indicate, and the submitted documents do not themselves reflect, that either the district or any of the schools to which the submitted information pertains is an emergency response provider for the purposes of section 418.176. We therefore conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with section 418.176 of the Government Code. We also note that section 418.182 is applicable to information relating to a security system, such as an alarm or camera system, located on the premises of public or private property. As you have not sufficiently demonstrated that any of the remaining information pertains to the specifications, operating procedures, or location of such a security system, we conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with section 418.182 of the Government Code.

You also raise section 552.101 in conjunction with section 551.076 of the Government Code. That section is part of the Open Meetings Act, chapter 551 of the Government Code, and provides that “[t]his chapter does not require a governmental body to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices.” *Id.* § 551.076. You state that the legislature recently amended section 551.076 to allow discussions of safety audits or emergency operations plans to be held in closed sessions.<sup>2</sup> You contend that this amendment “clearly indicates the [legislature’s] acknowledgment that information regarding safety audits and emergency operations plans is confidential.” You have not explained, however, how or why section 551.076 would make any of the remaining information at issue here confidential for the purposes of section 552.101. *See* Open Records Decision No. 485 at 9-10 (1987) (fact that subject was discussed in executive session does not make information related to discussion confidential); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language

---

<sup>2</sup>We note that the recent amendment of section 551.076 will not take effect until September 1, 2007. *See* Act of May 28, 2007, 80<sup>th</sup> Leg., R.S., S.B. 11, §§ 3.07, 22.01.

making certain information confidential or stating that information shall not be released to public). We therefore conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with section 551.076 of the Government Code.

In summary, except for the information that we have marked for release, the district must withhold the highlighted portions of the submitted documents under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The rest of the 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).

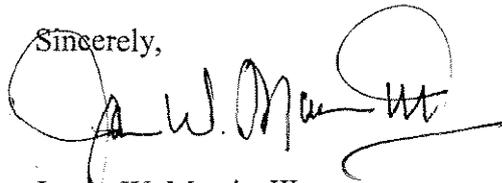
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 285804

Enc: Submitted documents

c: Ms. Adriana L. Garza  
Corpus Christi Caller-Times  
820 North Lower Broadway  
Corpus Christi, Texas 78401  
(w/o enclosures)