



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2007

Ms. Ellen H. Spalding
Feldman & Rogers, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2007-16245

Dear Ms. Spalding:

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# 296808.

The Conroe Independent School District (the "district"), which you represent, received a request for the district's security audit administrative summary.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. This section provides in part that:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹You inform us, and provide documentation showing, that the district sought and received clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); Open Records Decision No. 633 at 5 (1999) (ten business-day deadline tolled while governmental body awaits clarification).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed report made for the district. Therefore, this information must be released under section 552.022 unless it is confidential under other law. Section 552.111 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the submitted information may not be withheld under section 552.111. Section 552.101 is considered other law for section 552.022 purposes; therefore, we will consider your argument under that exception.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with sections 418.177, 418.181, 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 418.177 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 418.181 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.

Id. § 418.181. 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 418.177, 418.181, 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 most of the submitted information “deals directly with preventing, detecting, or investigating the specific acts of what could be terrorism and related criminal activity.” You also give examples of how some of the submitted information could be used for terrorism or related criminal activity. Thus, you contend that these documents are confidential in their entirety under sections 418.177, 418.181, and 418.182. Having considered your arguments and reviewed the submitted information, we agree that the information we have marked is related to the district’s assessment of its risk or vulnerability to an act of terrorism or related criminal activity. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with section 418.177. The remaining information consists of general maintenance and safety concerns for the entire district and does not reveal specific risks of the district to an act of terrorism or related criminal activity. Therefore, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177.

Next, we will address your remaining claims under the Texas Homeland Security Act. As stated above, the remaining information consists of district wide maintenance and safety concerns. Thus, this information does not reveal the particular vulnerabilities of the district’s critical infrastructure to an act of terrorism. *See id.* § 418.181. 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. No portion of the remaining information pertains such a system within the district. Therefore, we conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with sections 418.181 and 418.182 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 418.177 of the Government Code. The remaining 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

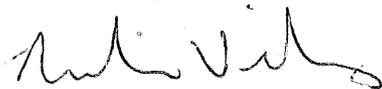
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 296808

Enc. Submitted documents

c: Ms. Kassia Micek
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(w/o enclosures)