



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2008

Ms. Angela H. Robinson
Law, Snakard & Gambill
1600 West Seventh Street, Suite 500
Fort Worth, Texas 76102

OR2008-08439

Dear Ms. Robinson:

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# 312321.

The Tarrant County College District (the "college"), which you represent, received a request for information related to the "District Wide Physical Security Threat Evaluation/Assessment and Recommendation" report for the college's downtown campus that was created by a third-party consultant. You state that the college will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that a portion of the request requires the college to manufacture documents. In part, the requestor seeks a list of individuals who received a copy of the report. We note that a governmental body is not required to create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We therefore agree that the college does not need to create a list of the information

requested. However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Therefore, if the college maintains documents that identify who received the report, those documents are responsive to the request and must be released to the requestor.

Next, 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed report made for the college. Although you claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code, this exception 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. However, section 552.022(a)(1) specifically allows for the exception of information under section 552.108. Section 552.101 is considered other law for section 552.022 purposes. Therefore, we will address your arguments under sections 552.101 and 552.108 for the submitted information.

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 418.176, 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 (the "THSA"). 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 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.

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.

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. §§ 418.176, .177, .181, .182. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the THSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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).

Portions of the submitted report consist of an assessment of the vulnerabilities of the campus and its students to terrorism and related criminal activity. We have marked the information

that reveals the assessments and recommendations related to police operations, camera and alarm systems, call boxes, and building and parking lot security. The college must withhold the marked information under section 552.101 in conjunction with section 418.177. The remaining information, however, consists of general maintenance and safety concerns for the college and does not reveal specific risks of the college to an act of terrorism or related criminal activity. Therefore, the college may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177. Furthermore, because you have not explained how the remaining general maintenance and safety information is related to terrorism, you have failed to demonstrate how sections 418.176, 418.181, or 418.182 are applicable. Therefore, the remaining information may not be withheld under these sections.

We next address your claims under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. *See* Gov't Code § 552.108. The college is not a law enforcement agency. Accordingly, the college may not withhold any of the remaining information under section 552.108(b)(1).

We note that some of the remaining portions of the report are copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the college 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 to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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). If the governmental body does not file suit over 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 312321

Enc. Submitted documents

c: Ms. Betty Brink
7600 Anglin Drive
Fort Worth, Texas 76140
(w/o enclosures)