



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2008

Mr. Ken Petersen
General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2008-12479

Dear Mr. Petersen:

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# 319724.

The Texas Water Development Board (the "board") received a request for information relating to the StratMap project, including information regarding possible law enforcement or homeland security uses for StratMap.¹ You state that some of the requested information has been released. You have submitted information that the board seeks to withhold under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed 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 contend that most of the submitted information is confidential under

¹You inform us that the board requested and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

section 552.101 in conjunction with sections 418.176 and 418.177 of the Government Code.² Those sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.176 provides in 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 the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). 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. The fact that information may generally be related to emergency preparedness or an assessment of risk or vulnerability does not make the information *per se* confidential under section 418.176 or section 418.177. *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 that asserts the applicability of section 418.176 or section 418.177 must adequately explain how the responsive information falls within the

²We note that the board initially claimed that all of the submitted information is generally confidential under sections 418.176 and 418.177. In subsequent correspondence with this office under section 552.303 of the Government Code, you now argue that most of the submitted information falls within the scope of those statutes. *See* Gov't Code § 552.303(c)-(d).

scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You contend that some of the submitted information is confidential under section 418.176. You state that the information at issue lists the telephone, mobile, and pager numbers of key personnel and identifies and discusses tactical plans of the board and other governmental entities. We note that section 418.176 is applicable only to information relating to an emergency response provider. *See id.* § 418.176(a)(1)-(3); Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). The telephone and mobile phone numbers that you seek to withhold are those of employees of the board. You do not inform us, nor does the submitted information reflect, that the board is an emergency response provider. Moreover, you have not demonstrated that any of the information at issue is related to a tactical plan of an emergency response provider. Thus, having considered your arguments, we conclude that you have not demonstrated that section 418.176 of the Government Code is applicable to any of the information at issue. Therefore, the board may not withhold any of the submitted information on that basis under section 552.101 of the Government Code.

You also contend that some of the submitted information is confidential under section 418.177. You note that the information at issue is titled "Threat Assessment." You argue that the information is related to an assessment by the board of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. We note that some of the information that you seek to withhold is available on the websites of the board and the Office of the Governor. We are unable to find that section 418.177 is applicable to information that an agency has published on its website. Having reviewed the rest of the information at issue and considered your arguments, we conclude that some of the information is confidential under section 418.177 of the Government Code. The board must withhold that information, which we have marked, under section 552.101 of the Government Code. We find that you have not adequately demonstrated that section 418.177 is applicable to any of the remaining information at issue, and therefore the board may not withhold any of that information under section 552.101.

We note that section 552.117 of the Government Code may be applicable to the submitted mobile telephone numbers of the board's employees.³ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Section 552.117 also encompasses a personal cell telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, because this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the board must withhold the telephone numbers that we have marked under section 552.117(a)(1) to the extent that the employees concerned paid for their mobile telephone service and timely elected under section 552.024 to keep their home telephone numbers confidential.

In summary: (1) the board must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code; and (2) the marked mobile telephone numbers must be withheld under section 552.117(a)(1) of the Government Code to the extent that the employees concerned paid for their mobile telephone service and timely elected under section 552.024 of the Government Code to keep their home telephone numbers confidential. 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 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

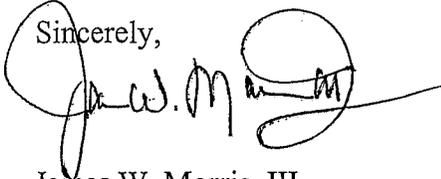
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/jh

Ref: ID# 319724

Enc: Submitted documents

c: Mr. Lucius Lomax
P.O. Box 225193
San Francisco, California 94122
(w/o enclosures)