



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2008

Ms. Jennifer Tharp  
Chief Civil Prosecutor  
Comal County  
150 North Seguin Avenue, Suite 314  
New Braunfels, Texas 78130

OR2008-14080

Dear Ms. Tharp:

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# 323126.

The Comal County Emergency Management Coordinator and the Comal County Auditor (collectively the "county") each received a request for multiple categories of information which relate to disaster plans, emergency management plans, requests for assistance from the federal and state government, and other specific reports. We understand that the county has no information responsive to portions of the requests.<sup>1</sup> You state that you are releasing most of the requested information. You also state that you have previously released some information responsive to this request in response to a prior request for information from this requestor. See Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant requests for information). You claim that a portion of the requested information is not "public information" under the Act. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, a portion

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<sup>1</sup> We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

of which consists of a representative sample.<sup>2</sup> We have also received and considered comments submitted by the requestor. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that a portion of the requested information is not subject to the Act. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

*Id.* § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994).

The requestor seeks a copy of the Texas Disaster Act. We find that this information is "information in a commercial book or publication purchased or acquired by the governmental

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<sup>2</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

body for research purposes . . . [and is] commercially available to the public.” Gov’t Code § 552.027(a). Accordingly, the Texas Disaster Act need not be released in response to this request.

~~Next, we note that the county asked the requestor for clarification of some of the requested information. *See id.* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You do not indicate that the requestor has responded to this request for clarification; therefore, the county is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the county must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (ten-business-day deadline tolled while governmental body awaits clarification).~~

We now address your arguments against disclosure. 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, including sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. 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 that information is confidential if it:

- (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 be related to a governmental body's emergency response preparedness or security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision 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 HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state that the Emergency Management Plan (the "plan") "directs and layouts (sic) for [the county] and other participating jurisdictions the method and means of how those entities respond to and deal with emergency, crisis, and terrorist events." You further state that "there are different schemes and methods of approaches dependent upon the particular crisis, disaster, or circumstances being responded to, contained or handled." Based on your representations and our review of the submitted information, we find that you have demonstrated that a portion of the submitted information is collected, assembled, or maintained by or for the county for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity as it relates to an emergency response provider's staffing requirements, tactical plan, and list of pager and telephone numbers. *See id.* § 418.176(a)(1)-(3). Accordingly, the county must withhold the information we have printed and marked under section 552.101 in conjunction with section 418.176 of the Government Code. The remaining information, however, consists of the county's general plans for responding to an emergency, and does not reveal specific staffing requirements or tactical plans. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with section 418.176 of the Government Code.

In addition, we find that portions of the remaining information are collected, assembled, or maintained by or for the county for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relate to an assessment maintained by the county of the vulnerabilities of critical infrastructure to an act of terrorism or related criminal activity. *See id.* § 418.177. The county must withhold the information we have printed and marked under section 552.101 in conjunction with section 418.177 of the Government Code. However, the remaining information consists of the county's general safety concerns and does not reveal specific risks of the county to an act of terrorism or related criminal activity. Therefore, the county may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177.

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 418.176 and 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). 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