



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2008

Mr. John W. Peeler
Coveler & Katz, P.C.
820 Gessner Road, Suite 1710
Houston, Texas 77024-8261

OR2008-16326

Dear Mr. Peeler:

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# 328804.

The Magnolia Volunteer Fire Department (the "department"), which you represent, received two requests, one for the current department roster and the other for the names, home addresses, and telephone numbers of all of the department volunteers and employees.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that most of the information in the submitted personnel register, which you submitted in response to the second request, is not responsive to that request because it does not constitute the names, home addresses, and telephone numbers of department volunteers or employees. To the extent that the personnel register contains other types of information, such information is not responsive to the second request. This ruling does not address the public availability of the information in the personnel register that is not responsive to the

¹You state that the department sought and received a clarification of the information requested in the second request for information. *See* Gov't Code § 552.222 (providing that 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).

²We 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.

second request, and the department need not release that information in response to the request.

Next, we note that you have submitted the current department roster and a representative sample of the personnel register. You indicate that the personnel register contains only the names and addresses of paid employees of the department and not those of unpaid volunteers. You state that there are other documents that could be responsive to the requestor's request for the names, addresses, and telephone numbers of department volunteers. Therefore, to the extent that additional information responsive to the request for the names, addresses, and telephone numbers of department volunteers existed at the time of the request, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now turn to your arguments against the disclosure of the roster submitted as information responsive to the first request. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential. You assert that the submitted roster is confidential under the Texas Homeland Security Act (the "HSA"), specifically section 418.176 of the Government Code. 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 the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

...

(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)(1), (3). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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).

We first address the requestor's contention that the department is not a "governmental entity" under the HSA. We initially note that "governmental entity" is not defined in the HSA. However, a "local governmental entity" is defined in the HSA and includes an "emergency services district." *Id.* § 418.004(10). You inform us that the department "contracts with the Montgomery County Emergency Services District No. 10 (the "district") to provide the governmental service of fire suppression services, including responses to acts of terrorism." We note that section 418.176 of the HSA applies solely to information relating to an "emergency response provider," which includes a "fire-fighting agency, or an emergency services agency." *Id.* § 418.176(a). You inform us that the majority of fire-fighting agencies in Texas are either "all volunteer" or "mostly volunteer." We believe the intent and purpose of section 418.176 is to protect the terrorism-sensitive information of all fire-fighting agencies, including volunteer fire departments. Having considered the parties' arguments, we conclude that the HSA can protect information relating to a volunteer fire department.

You claim that the submitted roster is confidential under section 418.176(a)(1) and (3). You assert that the submitted roster was "created, assembled, or maintained for the purpose of responding to, among other incidents, acts of terrorism." You assert that release of the submitted roster could allow someone to plan to interfere with or obstruct the department's response to an act of terrorism. You also assert that the roster relates to the staffing requirements of a fire fighting agency and consists of a list of telephone numbers of a fire fighting agency. Based on your representations and our review of the submitted roster, we find that you have demonstrated that the submitted roster is information collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(1), (3). We therefore conclude that the department must withhold the submitted roster under section 552.101 in conjunction with section 418.176 of the Government Code.³

Next, you assert that a portion of the responsive information in the submitted personnel register is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses of a current or former official or employee of a governmental body who timely requests under section 552.024 that this information be kept confidential.⁴ We note that section 552.117 does not protect from disclosure information that concerns an individual who is merely a volunteer for the department and not a current or former department official or employee. Therefore, the

³As our ruling is dispositive as to the submitted roster, we need not address your remaining argument against its disclosure.

⁴We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

department may not withhold information that pertains to volunteers under section 552.117. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

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. You inform us that the employees at issue made timely elections for confidentiality under section 552.024. Accordingly, the department must withhold the home addresses that you have marked in the submitted personnel register under section 552.117(a)(1) of the Government Code. However, the marked information may not be withheld under section 552.117(a)(1) to the extent that it relates to a volunteer and not a paid employee.

In summary, the department must withhold the submitted roster under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. To the extent the information pertains to paid employees of the department, the department must also withhold the home addresses you have marked in the submitted personnel register under section 552.117(a)(1) of the Government Code. The remaining responsive information in the submitted personnel register must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 328804

Enc. Submitted documents

c: Requestor
(w/o enclosures)