



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

Ms. Myrna S. Reingold
Galveston County
Legal Department
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2009-02610

Dear Ms. Reingold:

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# 335967.

Galveston County (the "county") received a request for e-mails sent and received by a named individual during a specified time period. You state that you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and 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 section encompasses information that is made confidential by statute. Section 418.179(a) provides:

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 the details of the encryption codes or security keys for a public communications system.

Gov't Code § 418.179. The fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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 as part of an emergency response, the State of Texas and the county participate in secure conference calls. Although, in the present case, the communications system was used for the preparation and response to Hurricane Ike, you state that the communications system is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Based on your representations and our review of the information at issue, we agree that the secure telephone numbers, passcodes, and PIN numbers you have marked relate to the details of the encryption codes or security keys for a public communications system maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Accordingly, this information must be withheld under section 552.101 of the Government Code in conjunction with section 418.179 of the Government Code.

Next, section 552.117(a)(1) excepts from public 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). 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 county employees whose personal information you have marked elected to keep their personal information confidential before the county received the present request for information. Therefore the county must withhold the information you have marked under section 552.117(a)(1). We have marked additional personal information relating to county employees. However, you do not inform this office that the county employees whose

information we have marked elected to keep their personal information confidential before the county received the present request for information. We must therefore rule conditionally. If the employees whose personal information we have marked timely elected to withhold their personal information under section 552.024, the information we have marked must be withheld under section 552.117(a)(1). If those employees did not timely elect confidentiality, the information we have marked may not be withheld under section 552.117(a)(1).

Finally, section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Further, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have marked e-mail addresses, and we have marked additional e-mail addresses, that the county must withhold under section 552.137 of the Government Code, unless the owner of the e-mail addresses affirmatively consented to their disclosure.¹

In summary, (1) the county must withhold the information you have marked under section 552.101 in conjunction with section 418.179 of the Government Code; (2) the county must withhold the information you have marked under section 552.117(a)(1); (3) to the extent the employees whose information we have marked elected to keep their personal information confidential under section 552.024 prior to the date of the request, the county must withhold this information under section 552.117(a)(1); and (4) unless the owner of the e-mail addresses affirmatively consented to their disclosure, the county must withhold the e-mail addresses you have marked, in addition to the e-mail addresses we have marked, under section 552.137 of the Government Code. The remaining information must be released.

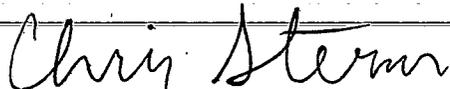
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 335967

Enc. Submitted documents

c: Requestor
(w/o enclosures)