



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2009

Ms. Katherine R. Fite  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2009-11500

Dear Ms. Fite:

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# 352426.

The Office of the Governor (the "governor") received a request for specified communications between the governor and the United States Department of Homeland Security ("DHS") during a specified time frame. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also indicate that the request may implicate the interests of DHS and have notified DHS of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DHS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address DHS's argument that the submitted information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Likewise, the Act is applicable

to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Conversely, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). Upon review, we conclude that the submitted information relates to the transaction of the official business of the governor and is maintained by the governor, and, therefore, constitutes "public information" of the governor. *See* ORD 534 at 2-3, 518 at 2-3. Consequently, the governor may only withhold this information from the requestor if it is excepted from disclosure pursuant to a provision of the Act. Thus, we next address the governor's claimed exceptions to the Act.

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, such as section 418.177 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. 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 a vulnerability assessment does not make the information *per se* confidential under 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 asserting this section 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).

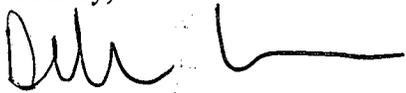
You state that the submitted information "specifically contain[s] the assessment by DHS of risks and vulnerabilities to an act of terrorism and information regarding critical infrastructures." You argue that "[r]eleasing this information threatens homeland security and necessarily reveals homeland security plans." Upon review of your arguments and the

information at issue, we agree that Exhibit B is related to an assessment maintained by the governor of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity, for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the governor must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.177. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/jb

Ref: ID# 352426

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)