



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2010

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2010-01649

Dear Ms. Alexander:

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# 369286.

The Texas Department of Transportation (the "department") received a request for specified flight records, records showing costs associated with managing the department's aviation division and its planes for specified fiscal years, lists of people permitted to use the department's planes, rules or regulations regarding use of the planes, and records showing the vehicle identification or tail numbers and make and model of each plane owned by the department. You indicate the department is releasing some of the requested documents. You state the department has no information responsive to a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.151 of the Government Code.<sup>2</sup> You state, and provide documentation showing, that you have notified three interested third parties, the Department of Public Safety ("DPS"), the Office of the Governor (the "governor"), and the Office of the Attorney General ("OAG"), of their right to submit arguments to this office as to why the requested information should

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See 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). We also note that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup>We note that although you raise all the exceptions under the Act, you make no arguments to support the rest of these exceptions. Therefore, we assume you have withdrawn your claims that the rest of these sections apply to the submitted information.

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 considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received and considered comments from the requestor, DPS, and the governor. *See id.*

Initially, we note the requestor has agreed to the redaction of the names of officers within the Governor's Protective Detail ("GPD") and officers within the Attorney General's Protective Detail ("AGPD"). Therefore, any names of the GPD or AGPD officers within the submitted documents are not responsive to the present request for information. Our ruling does not address this non-responsive information, and the department need not release this information in response to the request.<sup>4</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 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 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). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive

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<sup>3</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.

<sup>4</sup>Accordingly, we do not address the submitted arguments for the non-responsive information.

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).

The department asserts that the responsive information reveals staffing requirements of the GPD and the AGPD. You explain that "knowing how many people are likely to be protecting a government official would be valuable information for someone who intended to cause harm to these public employees." Further, you state that DPS and the OAG "do not publicly identify the number of individuals protecting the Governor or Attorney General on a permanent basis or at any particular time." Upon review, we find the department has demonstrated that some of the information at issue relates to staffing requirements 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. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 418.176 of the Government Code.<sup>5</sup> However, we find the remaining information does not relate to staffing requirements of the GPD and the AGPD for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with section 418.176 of the Government Code.

Section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.151. The department asserts that "disclosure of the number of officers providing security could seriously compromise the safety of the government official such as the [G]overnor or the [A]ttorney [G]eneral." However, upon review, we find none of the remaining information discloses of the number of officers providing security or is information that would subject an employee or officer of a governmental body to a substantial threat of physical harm. Accordingly, none of the remaining information may be withheld under section under section 552.151 of the Government Code.

In summary, the department must withhold the responsive information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code. The remaining responsive information must be released to the requestor.

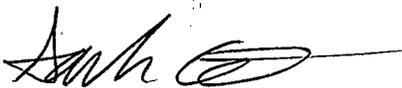
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<sup>5</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against disclosure of this information.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 369286

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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