



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2010

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-03366

Dear Mr. Swope:

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# 371938 (C.A. File No. 09GEN2461).

The Harris County Office of Homeland Security & Emergency Management (the "office") received a request for the county's Emergency Operation Plan. You state you have released most of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." *Id.* § 552.101. This exception encompasses information that other statutes make confidential, including sections 418.176 and 418.179 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). Section 418.179(a) 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 the details of the encryption codes or security keys for a public communications system.

Gov't Code § 418.179(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). 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 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 assert that portions of the submitted information are confidential pursuant to section 418.176 of the Government Code in conjunction with section 552.101. You state that the telephone numbers you have highlighted within Exhibit B are part of an emergency response system and are maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. You also contend that Exhibit C "contains documents regarding response and time sensitive information." Upon review, we find you have demonstrated that the telephone numbers at issue are part of a compilation of telephone numbers 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 office must withhold this information, which we have marked, under section 552.101 in conjunction with section 418.176 of the Government Code.¹ You have not, however, specifically explained how or why the information in Exhibit C is related to

¹As our ruling is dispositive for this information, we need not address the remaining arguments against disclosure of this information.

the staffing requirements, a tactical plan, or the pager or telephone numbers of an emergency response provider. *See id.* § 418.176(a)(1)-(3). Accordingly, the office may not withhold any of the remaining information under section 552.101 in conjunction with section 418.176 of the Government Code.

You state portions of the remaining information within Exhibit C are excepted from disclosure under section 418.179 of the Government Code in conjunction with section 552.101. However, the remaining information does not contain the encryption codes or security keys for a public communications system, nor have you demonstrated how the remaining information is otherwise related to the encryption codes or security keys for a public communications system. Therefore, we conclude that the remaining information is not confidential under section 418.179 of the Government Code, and it may not be withheld under section 552.101 on that basis.

We note the remaining information contains information subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purposes of communicating electronically with a governmental body,” unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137 (a)-(c). We have marked e-mail addresses in the remaining information that are not of a type specifically excluded by subsection (c). Accordingly, the office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.³

In summary, the office must withhold the telephone numbers we have marked under section 418.176 of the Government Code in conjunction with section 552.101, and the e-mail addresses we have marked under section 552.137, unless the owners affirmatively consent to their disclosure. The remaining information must be released to the requestor.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

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 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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 371938

Enc. Submitted documents

c: Requestor
(w/o enclosures)