



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2010

Mr. Mark Adams
Office of the General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2010-09501

Dear Mr. Adams:

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# 384479.

The Office of the Governor (the "governor") received a request for four categories of information relating to the temporary governor's mansion.¹ You state some of the requested information has been released. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.151 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 exception encompasses the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 of the HSA provides in 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:

¹You indicate the governor sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(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[.]

Gov't Code § 418.176(a). The fact that information may relate to a governmental body's security concerns or emergency management activities does not make the information *per se* confidential under the HSA. *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 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) (governmental body must explain how claimed exception to disclosure applies).

You claim portions of the submitted information are subject to section 418.176(a)(1) because they relate to the staffing requirements of the governor's protective detail. You assert release of this information would make members of the protective detail "vulnerable to threats, extortion or other pressure from individuals who might seek to defeat or avoid security measures." Further, you claim portions of the submitted information are subject to section 418.176(a)(2) because they relate to the tactical plan of the governor's protective detail. You argue knowledge of this information could be used "to aid someone planning an act of terrorism or related activity against the governor, his family and his residence." Upon review, we find the governor has demonstrated the information at issue relates to the staffing requirements or tactical plan of an emergency response provider, 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. Accordingly, the governor must withhold the information you have marked under section 552.101 in conjunction with section 418.176 of the Government Code.²

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code.³ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

³The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The address we have marked in the remaining information does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the governor must withhold the marked e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release.⁴ *See id.* § 552.137(b).

In summary, the governor must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The governor must also withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. 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 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tp

Ref: ID# 384479

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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 of the Government Code, without the necessity of requesting an attorney general decision.

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