



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
Frank Crowley Criminal Courts Building
133 Riverfront, LB-31
Dallas, Texas 75207-4313

OR2010-18331

Dear Ms. Lutton:

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# 403632.

The Dallas County Sheriff's Department (the "sheriff") received a request for all e-mails and text messages received or sent by two named individuals on a specified date. You state you do not have the requested text messages. You state you released most of the requested e-mails. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that some of the submitted information was created after the date of the sheriff's receipt of this request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. Thus, the portions of the submitted information that did not exist when the sheriff received this request are not responsive to the request. This decision does not address the public availability of that information, which we have marked, and the sheriff need not release it in response to this request.

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:

(1) relates to the 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.

Id. § 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).

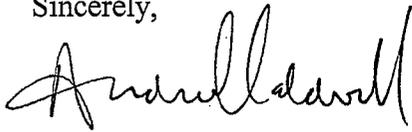
You explain that one of the submitted e-mails relates to a tactical plan involving the sheriff and the Dallas Police Department as well as staffing requirements. You state the second submitted e-mail is from the Texas Department of Public Safety Intelligence and Counter-Terrorism Division (the "division") and outlines the types of information from the tactical plan that will be collected by the division. Upon review, we find the sheriff has demonstrated this submitted information relates to tactical plans and staffing requirements of a law enforcement entity maintained by or for a governmental entity for the purpose of preventing or responding to an act of terrorism or related criminal activity. Therefore, the submitted responsive information is confidential under section 418.176(a) of the Government Code and must be withheld under section 552.101 of the Government Code.¹

¹As our ruling for this information is dispositive, we need not address your remaining argument against its 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, 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 403632

Enc. Submitted documents

c: Requestor
(w/o enclosures)