ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2011

Mr. Ben Stool
Assistant Criminal District Attorney
Dallas County
Administration Building - 5th Floor
411 Elm Street
Dallas, Texas 75202-3317

Ms. Maurine Dickey
Dallas County Commissioner, District 1
411 Elm Street
Dallas, Texas 75202

OR2011-06367

Dear Mr. Stool and Ms. Dickey:

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# 416936.

The Dallas County Commissioner's Court (the "court") received a request for all documentation regarding a specified incident. You state the court will release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.106, and 552.109 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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 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 the 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. 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 of a statute's key terms is not sufficient to demonstrate the applicability of the 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 some of the submitted e-mails relate to the "staffing requirements of . . . the Federal Bureau of Investigations, the North Texas Joint Terrorism Task Force, and the Dallas County Director of Homeland Security and Emergency Management, as well as the potential tactical plans of those providers." Upon review, we have marked a telephone number that was collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). We have also marked information related to staffing requirements and tactical plans of an emergency response provider that was collected, assembled, or maintained for the purpose of responding to an act of terrorism or related activity. *See id.* § 418.176(a)(1)-(2). The court must withhold the marked information under section 552.101 in conjunction with section 418.176 of the Government Code. However, we find the remaining information in these e-mails does not relate to staffing requirements or tactical methods of an emergency response provider, nor does it consist of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, none of the remaining information in these e-mails may be withheld under section 552.101 in conjunction with section 418.176 of the Government Code.

We now turn to your argument under section 552.106 of the Government Code. Section 552.106 excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation" and "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation." *Id.* § 552.106(a)-(b). We note section 552.106(b) applies to information created or used by employees of the governor's office for the purpose of evaluating proposed legislation. The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *See* Open Records Decision No. 615 at 2 (1993). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *See id.* at 1; *see also* Open Records Decision No. 429 at 5 (1985) (statutory predecessor to section 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances).

In this instance, you generally assert some of the remaining information is excepted from disclosure under section 552.106. However, you have not demonstrated how the information at issue constitutes a draft or working paper involved in the preparation of proposed legislation. Further, you have failed to demonstrate that this information constitutes of an internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation. Therefore, we conclude the court may not withhold any of the remaining information under section 552.106.

You also raise section 552.109 of the Government Code for portions of the remaining information, which excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy [.]" Gov't Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy if it: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person; and (2) is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing. Therefore, none of the remaining information may be withheld under section 552.109 of the Government Code.

We note a portion of the remaining information is subject to section 552.137 of the Government Code, which 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 address is of a type specifically excluded by subsection (c)[1]. *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the court must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.[2]

The court must withhold the information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code. The court must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,

Christina Alvarado
Assistant Attorney General
Open Records Division

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

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

Ref: ID# 416936

Enc. Submitted documents

c: Requestor
(w/o enclosures)