



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2011

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-12370

Dear Ms. Sangsvang:

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# 428060 (ORR# W009433).

The City of Fort Worth (the "city") received a request for information submitted to the Texas Comptroller as supporting documentation for repayment of Super Bowl expenses from the Major Events Trust Fund. You state you are releasing some of the requested information. You state the city is withholding bank account, routing, and credit card numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.130 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

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<sup>1</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code; credit card, debit card, charge card, insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code; and 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.

Code § 552.101. This exception encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with sections 418.176, 418.177, and 418.181 of the Government Code for information you have marked in the submitted information. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). 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 law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176. Section 418.177 provides as follows:

Information is confidential if the information

(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 an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. 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 one of these sections 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 portions of the submitted information consist of staffing requirements and tactical plans of emergency response providers related to the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. You state the information you have marked pertains to the city's police, fire, and marshal's departments as first responders to emergency situations. You state these departments maintain order and control in the event of a terrorist attack upon the critical infrastructure of the city. You argue the release of staffing requirements and tactical planning of law enforcement could allow terrorists and criminals to use the information to jeopardize the lives of first responders and citizens. Upon review, we find you have demonstrated some of the information you have marked relates to staffing requirements of emergency response providers maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism, or to tactical plans of emergency response providers. Accordingly, this information, which we have noted, is confidential pursuant to section 418.176 of the Government Code and the city must withhold it under section 552.101 of the Government Code.

You assert portions of the remaining information relate to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. You state the city is retaining all of its tactical and security planning materials in anticipation of the return of the next Super Bowl and similar events. You explain the city plans to use the information at issue to plan and assess risks and vulnerabilities of persons and property in anticipation of similar large city events in the future. Upon review, we find you have demonstrated some of the remaining information you have marked was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism and relates to an assessment of the risk or vulnerability of critical infrastructure to an act of terrorism. Thus, this information, which we have noted, is confidential pursuant to section 418.177 of the Government Code and the city must withhold it under section 552.101 of the Government Code.

You assert the remaining information you have marked identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. You inform us some of the information at issue names specific equipment that is vulnerable to attack and that is in use by emergency responders. You further inform us some of the information at issue provides locations of the city's command post during major events. Upon review, we find you have demonstrated the remaining information you have marked identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, this information, which we have noted, is confidential pursuant to section 418.181 of the Government Code and the city must withhold it under section 552.101 of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive with respect to the information at issue, we need not address your remaining argument under section 552.108(b)(1) against disclosure of the information you have marked.

You argue some of the remaining information is protected by section 552.102(a) of the Government Code, which excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find the city must withhold the information you have marked under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or an agency of another state or country is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov’t Code §§ 552.130(a)(1), (2)). Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* Upon review, we find most of the information you have marked, and the additional information we have marked, consists of access device numbers for purposes of section 552.136. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold (1) the information you have marked under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177, and 418.181 of the Government Code; (2) the information you have marked under section 552.102(a) of the Government Code; (3) the motor vehicle record information you have marked under section 552.130 of the Government Code; and (4) with the exception of the information we have marked for release, the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 428060

Enc. Submitted documents

c: Requestor  
(w/o enclosures)