



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2011-16999

Dear Ms. Quinn:

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# 437716 (Ref. No. 11-821).

The City of Cedar Park (the "city") received a request for the city's emergency plan, emergency evacuation plan, the method by which the city alerted residents to evacuate during the Labor Day wildfires, and the name of the city's interim emergency management coordinator. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.¹ We have also received and considered comments submitted by the Williamson County Office of Emergency Management (the "county"). *See* Gov't Code § 552.304 (interested party may submit

¹Although the city and the Williamson County Office of Emergency Management (the "county") both cite to section 552.151 of the Government Code in their briefs, from the substance of the arguments we understand them to claim an exception under section 552.152. We note there were previously two sections of the Act numbered section 552.151. The first, which the city quoted, pertains to biological agents and toxins identified or listed as select agents under federal law. *See* Act of June 3, 2009, 81st Leg., R.S., ch. 1377, § 5, 2009 Tex. Gen. Laws 4325, 4325-26. The second, which the county cited, and which we understand the city to also raise, is an exception under the Act pertaining to the personal safety of public employees and officers. *See* Act of June 3, 2009, 81st Leg., R.S., ch. 283, § 4, 2009 Tex. Gen. Laws 742, 743. We note the 82nd Texas Legislature renumbered this exception as section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

comments stating why information should or should not be released). We have considered the submitted arguments 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 made confidential by other statutes. Both the city and the county raise section 552.101 in conjunction with sections 418.176 and 418.177 of the Government Code for 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;

(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). 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 the submitted information is “collected assembled, and maintained the sole purpose of preventing, detecting, and more importantly, for the purpose of responding to . . . acts of terrorism or related criminal activity or natural disasters that trigger the use of [the city’s] emergency management plan.” The county asserts the submitted information “is designed to prevent, detect, respond to, or investigate an act of terrorism or related criminal activity and consists of information regarding the staffing requirements and tactical plans of the [c]ounty” and the city. Upon review, we find the city and county have established the submitted information either relates to the staffing requirements of an emergency response provider, relates to a tactical plan of the provider, or consists of a list of telephone numbers of the provider under section 418.176. *See id.* § 418.176(a)(1)-(3). Accordingly, the city

must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 437716

Enc. Submitted documents

c: Requestor
(w/o enclosures)