



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2012

Ms. Leandra Costilla Ortiz  
Staff Attorney  
Brownsville Independent School District  
1900 Price Road  
Brownsville, Texas 78521-2417

OR2012-04796

Dear Ms. Ortiz:

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# 449458 (BISD# 6454).

The Brownsville Independent School District (the “district”) received a request for school records of a named student, surveillance video, and records of a specific incident involving the named student, district police reports of the incident, and district policies and procedures. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-04490 (2012). In that ruling, we concluded the information at issue in that ruling may be withheld under section 552.108(a)(1) of the Government Code. Accordingly, as we have no indication that the law, facts, or circumstances on which our prior ruling was based have changed, you may continue to rely on that prior ruling as a previous determination and withhold the information in Exhibits A through C in accordance with Open Records Letter No. 2012-04490. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous

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<sup>1</sup>Although you raise section 552.152 of the Government Code, you make no arguments to support this exception. Accordingly, we understand the district no longer asserts this exception. *See* Gov’t Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 information other statutes make confidential. You claim section 552.101 in conjunction with section 37.108 of the Education Code, which provides, in part:

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district’s facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a comparable public or private entity.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

Educ. Code § 37.108(b), (c-1). You state the information in Exhibits D and E was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b). We understand none of the exceptions in subsection (c-2) are applicable to the information at issue. *See id.* § 37.108(c-2) (listing types of documents relating to district’s multihazard emergency operations plan that are subject to disclosure). Based on your representations and our review, we conclude the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. However, upon review, we find you have not demonstrated how Exhibit E was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). Accordingly, the district may not withhold Exhibit E under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Texas Homeland Security Act (“HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 of the Government Code provides “[t]hose 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.” Gov’t Code § 418.181. The fact that information may relate to a governmental body’s security concerns 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 the claimed provision.

We note the school at issue in the request is critical infrastructure for the purposes of section 418.181 of the Government Code. *See* Gov't Code § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Upon review, we find the floor plans in Exhibit E reveal the technical details of particular vulnerabilities of the school to an act of terrorism. Therefore, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the district may rely on Open Records Letter No. 2012-04490 as a previous determination and withhold Exhibits A through C in accordance with the prior ruling. The district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code, and Exhibit E under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 449458

Enc. Submitted documents

c: Requestor  
(w/o enclosures)