



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2012

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-08543

Dear Ms. Chatterjee:

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# 458563 (OGC # 143407).

The University of Texas at Tyler (the "university") received a request for specified performance data for the 2010 and 2011 calendar years pertaining to the activation of emergency mass notification systems used to reach the campus community. You state the university does not have many of the requested categories of information.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as 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 staffing requirements of an emergency response provider, including a 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(a)(1), (2). 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 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 state the submitted information relates to the university’s tactical plan regarding its emergency notification system. You also state that, in this instance, the university is an emergency response provider because certain university officials and staff, including the university’s police department, have access to this system to send out alerts to the campus community for the purposes of preventing, detecting, and responding to potential acts of terrorism or other criminal activity. You inform us that the submitted information outlines the circumstances that would trigger the use of the system, how certain individuals access it, the protocol for using it, what information alerts should contain, and how successful certain means of communication were each time the system was used. Upon review, we find you have demonstrated that this information relates to a tactical plan of an emergency response provider and is 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. Accordingly, the submitted information is confidential pursuant to section 418.176 of the Government Code and the university must withhold it under section 552.101 of the Government Code.³

³As our ruling is dispositive, we need not address your 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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive style with a large initial 'S'.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 458563

Enc. Submitted documents

c: Requestor
(w/o enclosures)