



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2012

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard Street, Room 207
Corpus Christi, Texas 78401

OR2012-09730

Dear Ms. Jimenez:

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# 458841.

Nueces County (the "county") received a request for the county's emergency management plan (the "plan").¹ You claim 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 information.

Initially, you state a portion of the plan was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-10500 (2007). In that ruling, we determined the county must withhold a prior version of the plan under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. You state the submitted plan is the same as that at issue in Open Records Letter No. 2007-10500, with the exception of annexes A, C-F, H, I, O, P, R, and U, which have been updated since the time of the previous ruling. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the county may rely on Open Records Letter No. 2007-10500 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney

¹You state the county sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against the release of information not encompassed by Open Records Letter No. 2007-10500.

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. Section 552.101 encompasses information 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 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(a). 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 plan consists of information collected, assembled, and maintained by the county for the purposes of responding to natural or man-made emergency situations, including an act of terrorism or related criminal activity. You state the plan constitutes the county's tactical plan for responding to an act of terrorism or related criminal activity. Further, you state the plan includes information related to the county's emergency management staffing requirements and a compilation of the contact information for the county's emergency management response staff. You argue disclosure of any portion of the plan would compromise the county's ability to effectively respond to an emergency situation and would provide those who would commit an act of terrorism or related criminal activity with the information necessary to facilitate their acts or to assist them in avoiding apprehension. Based on these representations and our review, we find you have established

the submitted information 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 of the Government Code. Therefore, we find the submitted information is confidential under section 418.176 of the Government Code and must be withheld under section 552.101 of the Government Code.²

In summary, to the extent the submitted information is identical to the information previously ruled upon by this office in Open Records Letter No. 2007-10500, the county may rely on that ruling as a previous determination and withhold the identical information in accordance with Open Records Letter No. 2007-10500. To the extent the submitted information is not encompassed by the previous determination, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 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, 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 458841

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.