



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 17, 2013

Mr. David Timberger  
Director - General Law Division  
Office of Legal Services  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2013-12236

Dear Mr. Timberger:

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# 492406 (PIR Nos. 13-11914, 13-11954).

The Texas Commission on Environmental Quality (the "commission") received one request for a list of all fertilizer plants located in the state and a second request from a different requestor for (1) a list of all facilities in Texas licensed to store anhydrous ammonia or ammonium nitrate and (2) a list of all facilities permitted to load and store fertilizer materials. The commission claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

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 section encompasses information protected by other statutes, including the Texas Homeland Security Act, chapter 418 of the Government Code (the "HSA"). Section 418.178 of the HSA reads as follows:

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<sup>1</sup>We assume the "representative sample" of records 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 that submitted to this office.

(a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Gov't Code § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The commission asserts section 418.178 is applicable to the submitted information. You contend the information at issue reveals the locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon and thus is protected by section 418.178(b)(2)(A). We agree some of the information at issue, which we have marked, is confidential under section 418.178 of the Government Code. Therefore, the commission must withhold the information we have marked under section 552.101 in conjunction with section 418.178 of the Government Code.<sup>2</sup> We note section 418.178(b)(2)(A) is applicable only to information indicating the specific location of certain materials that are more than likely to assist in the construction or assembly of such a weapon. The remaining information you seek to withhold does not indicate the specific locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Accordingly, because the commission has not explained how section 418.178 encompasses any of the remaining information at issue, the commission may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 418.181 of the HSA 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; *see id.* § 421.001 (defining critical infrastructure to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). Upon review, we find you have failed to demonstrate how any of the remaining information at issue falls within the scope of section 418.181. Consequently, the commission may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

To conclude, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. The commission must release the remaining information to the requestor.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 492406

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)