



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2013

Ms. Ellen H. Spalding  
Rogers, Morris & Grover, LLP  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-17564

Dear Ms. Spalding:

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# 502113 (EISD Request 3846).

The Eanes Independent School District (the "district"), which you represent, received a request for a "[c]ount of computers running different operating systems, and copies of the licenses to use them." The district states it will release some of the requested information, but claims the submitted 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 public 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 protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. You assert the requested

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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.

information is made confidential by sections 418.177, 418.181, and 418.182 of the Government Code. Section 418.177 provides,

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. Section 418.181 provides,

Those 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.

*Id.* § 418.181. And section 418.182(a) provides,

Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). 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 a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The submitted information consists of a license confirmation allowing the district to use certain operating system software. The license contains item, customer, contract, and order numbers. You assert this information is confidential under sections 418.177, 418.181, and 418.182 because an individual with these specific details could access, disconnect, or change the district's operating system, which could potentially cause a failure to the

operating system. You also assert release of this information would allow the district's technology system to be accessed or hacked by criminals and terrorists, risking the exposure of confidential student, staff, and financial information. However, upon review, we conclude you have not established the submitted information was collected, assembled, or is maintained by or for the district for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity or relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Additionally, you have not established the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Moreover, you have not demonstrated how the submitted information consists of access codes and passwords or reveals the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find you have failed to establish any of the submitted information is confidential under section 418.177, 418.181, or 418.182 of the Government Code and, thus, the district may not withhold any of the submitted information under section 552.101 of the Government Code on any of those grounds.

You also argue the submitted information is excepted from disclosure pursuant to federal copyright law. However, copyright law does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, the district may not withhold any of the information at issue under section 552.101 in conjunction with copyright law, but any information that is protected by copyright may only be released in accordance with copyright law.

To conclude, the district must release the submitted information to the requestor. However, the district may only release any copyrighted information in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 502113

Enc. Submitted documents

c: Requestor  
(w/o enclosures)