



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2013

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2013-20895

Dear Ms. Alexander:

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# 507802.

The Texas Department of Transportation (the "department") received a request for records related to the use of state aircraft by the Office of the Attorney General ("OAG") during a specified period. You state the department does not maintain some of the records because they were destroyed pursuant to the department's records retention policy.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claimed and reviewed the submitted information. We have also considered comments from the OAG. *See Gov't Code* § 552.304 (providing interested third party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in part:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1–2 (1990).

(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 a governmental body's security concerns or emergency preparedness does not make the information *per se* confidential under 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 section 418.176 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 reveals staffing requirements of the security details on state flights, revealing whether security details traveled with the Attorney General on particular flights. The OAG explains the security detail is a law enforcement agency section of the Texas Department of Public Safety that accompanies the flights for the purpose of providing security to a public official. The OAG further explains that releasing this information would permit individuals to determine the level of security required to protect the Attorney General. Based on these representations and our review, we find the department has demonstrated that some of the information at issue relates to staffing requirements of a law enforcement agency 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. Therefore, the department must withhold this information, which we marked, under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.² However, we find neither the department nor the OAG has established the remaining information relates to staffing requirements for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

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

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

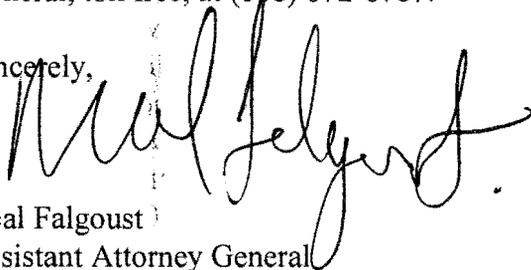
Id. § 552.152. The department and the OAG assert revealing the names of the security detail personnel and whether security accompanied the flight or the number of officers providing security would jeopardize the safety of the undercover officers and state officials. However, upon review, we find none of the remaining information discloses the names or the number of officers providing security or is information that would subject an employee or officer of a governmental body to a substantial threat of physical harm. Accordingly, none of the remaining information may be withheld under section 552.152 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The remaining information must be released.

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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

ef: ID# 507802

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)