



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 13, 2014

Mr. Christopher W. Ponder  
Assistant District Attorney  
Tarrant County Criminal District Attorney's Office  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR2014-02815

Dear Mr. Ponder:

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# 515296.

The Tarrant County District Clerk (the "district clerk's office") received a request for a "listing of all procedural manuals, policy and procedure manuals, and any and all directives, training programs, or any other directions, rules, or regulations promulgated by the department that directs the practices and procedures of the department." You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the obligations of the district clerk's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the district clerk's office received the request for information on November 26, 2013. We note November 28, 2013, and November 29, 2013, were holidays for the district clerk's office. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by subsection 552.301(b) by December 12, 2013. However, we did

not receive your request for a ruling until December 16, 2013. We note the envelope in which you sent the information required by section 552.301(b) is not postmarked. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude you failed to establish the district clerk's office complied with the procedural requirements mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). In failing to comply with the requirements of section 552.301, you have waived the district clerk's office's claim under section 552.103. Accordingly, the district clerk's office may not withhold the requested information under section 552.103. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

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 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, 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 some of the submitted information is made confidential by sections 418.177, 418.181, and 418.182 of the Government Code.<sup>1</sup> Section 418.177 provides,

Information is confidential if the information:

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<sup>1</sup>While the district clerk's office also raises section 418.183, this section is not a confidentiality provision, but instead, provides for release of otherwise confidential information under certain circumstances.

(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. Section 418.182 provides, in relevant part,

(a) 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 Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

You state the submitted information contains emergency evacuation procedures that relate to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. Additionally, you inform us some of the submitted information details the district clerk's office's cash policy and procedures revealing potential risks to critical infrastructure of the state district courts. Upon review, we find the information we have marked is confidential under section 418.177 of the Government Code. Therefore, the district clerk's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. However, we find you have not explained how any portion of the remaining information pertains to terrorism or related criminal activity. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the provisions of the Texas Homeland Security Act. As you raise no other exceptions to disclosure, the district clerk's office must release the remaining information.

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/akg

Ref: ID# 515296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)