



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2016

Ms. Jordan Hale
Public Information Coordinator
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2016-02045

Dear Ms. Hale:

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# 595595 (OOG ID# 15-456).

The Office of the Governor (the "governor's office") received a request for all grant applications from Brewster County approved or disapproved during a specified time frame, including a specified application. You state the governor's office has released some responsive information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the Alpine Police Department, the Brewster County Sheriff's Office, and United States Customs and Border Protection ("CBP"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received comments from CBP. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, 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 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).

CBP states the submitted information is related to its mission of “preventing, detecting, responding to, or investigating [acts] of terrorism or related criminal activity,” which includes securing the nation’s borders and protecting the public from dangerous people. CBP asserts the submitted information details its concept of the operation and execution of the plan for border security operations, and reveals the organization and distribution of CBP units, resources, and operations strategy. Upon review, we find CBP has demonstrated the information at issue relates to its staffing requirements and tactical plan, and is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, we conclude the submitted information is confidential under section 418.176 of the Government Code, and the governor’s office must withhold it under section 552.101 of the Government Code.¹

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.

¹As our ruling is dispositive, we do not address CBP’s other argument to withhold this information.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 595595

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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