



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 10, 2016

Mr. Vance Hinds  
Assistant County and District Attorney  
Ellis County and District Attorney's Office  
109 South Jackson  
Waxahachie, Texas 75165

OR2016-10602

Dear Mr. Hinds:

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# 609374.

The Ellis County Emergency Management Coordinator (the "county") received a request for information concerning an emergency disaster response to a specified weather event. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim 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." Gov't Code § 552.101. This exception encompasses information protected by other statutes, including sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides, in relevant part:

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<sup>1</sup>Although you also raise section 552.101 in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

(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 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). 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. 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* ORD 649 at 3. As with any confidentiality statute, a governmental body asserting these sections must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The county generally asserts the submitted information is confidential under sections 418.176 and 418.177 of the Government Code. However, upon review, we find the county has failed to establish the information at issue was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Thus, the county has not established any portion of the submitted information is confidential under section 418.176(a) of the Government Code. Accordingly, the county

may not withhold any portion of the submitted information under section 552.101 of the Government Code on that basis.

Further, we find the county has not demonstrated the information at issue 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 for purposes of section 418.177. Thus, the county has not demonstrated the applicability of section 418.177 to any of the submitted information. Accordingly, the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>2</sup> *Id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Section 552.1175(b) also applies to the personal cellular telephone number of an individual who falls within the scope of section 552.1175(a), provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information pertains to individuals who may be subject to section 552.1175 of the Government Code. Thus, to the extent the information we have marked consists of home or cellular telephone numbers of currently licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), the county must generally withhold the information we have marked under section 552.1175; however, the county may not withhold any marked cellular telephone numbers to the extent a governmental body pays for the cellular telephone service. To the extent the information we have marked does not consist of home or cellular telephone numbers, does not pertain to licensed peace officers, no election is made, or a governmental body pays for the cellular telephone service, the county may not withhold any such information under section 552.1175.

In summary, to the extent the information we have marked consists of home or cellular telephone numbers of currently licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), the county must generally withhold the information we have marked under section 552.1175; however, the county may not withhold any marked cellular telephone numbers to the extent a governmental body pays for the cellular telephone service. The county must release the remaining information.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Lee Seidlits", with a horizontal line extending to the right.

Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/bw

Ref: ID# 609374

Enc. Submitted documents

c: Requestor  
(w/o enclosures)