



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 28, 2016

Ms. Tiffany Evans  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2016-24070

Dear Ms. Evans:

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# 632146 (GC No. 23613).

The City of Houston (the "city") received a request for information pertaining to the "Digital Sandbox" system or "Haystax," in addition to Houston Fire Department (the "department") guidelines and a specified self-assessment and report. You state you will release some information. You claim the submitted information is 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes. Sections 418.176 through 418.182 of the Government Code were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act

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<sup>1</sup>We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.101 of the Government Code protects information made confidential under law, it is a mandatory exception that can provide a compelling reason to overcome the presumption of openness. Thus, we will consider the applicability of section 552.101 to the submitted information. *See id.* §§ 552.007, .302, .352.

(the "HSA"). These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant 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; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). Section 418.177 provides that information is confidential if it:

(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 418.178 provides:

(a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

*Id.* § 418.178. The fact that information may be related to a governmental body's security concerns, biological toxins, or emergency preparedness does not make such 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).

You state the information at issue is maintained by the department as "guidelines to provide a resource for members of the department to mitigate terrorist incidents." You also state "[t]he release of this information could alert . . . a terrorist to potential vulnerabilities within the [c]ity[.]" Based on your representations and our review, we find the information we have marked relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the city 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.<sup>2</sup> However, we find you have not demonstrated the remaining information 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. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

We understand you to assert the remaining information reveals staffing requirements or relates to a tactical plan of the department, which is a fire-fighting agency. You argue release of the remaining information "would significantly impact the [c]ity's ability to deliver public safety services to the citizens in the event of an act of terrorism or related criminal activity." Upon review, we find some of the remaining information relates to staffing requirements or tactical plans of a fire-fighting agency that is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Thus, we find section 418.176 applies to this information, which we have marked. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>3</sup> However, we find you have not demonstrated the remaining information relates to staffing requirements or a tactical plan of an emergency response provider for purposes of section 418.176.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Additionally, you have not demonstrated section 418.178(b)(1) or section 418.178(b)(2) encompasses the remaining information. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 or section 418.178 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code. The city 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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 632146

Enc. Submitted documents

c: Requestor  
(w/o enclosures)