



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2003-6503

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186916.

The City of Waco (the "city") received a request for the "number of people who have received the smallpox vaccine from the Waco-McLennan County Public Health District." The requestor also seeks to "know how many doses of the vaccine the health district has received as of today." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that the Seventy-eighth Legislature recently added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. House Bill 9 which became effective on June 22, 2003, provides in relevant part:

**Sec. 418.181. CONFIDENTIALITY OF CERTAIN INFORMATION
RELATING TO CRITICAL INFRASTRUCTURE.**

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.

Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (Vernon) (to be codified at Gov't Code § 418.181). The fact that information may relate to a governmental body's security measures or to certain biological agents and toxins does not make the information per se confidential under House Bill 9. *See* Open Records Decision Nos. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by the governmental body of the statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions enacted by House Bill 9 must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301 (stating, among other things, that governmental body bears burden of establishing applicability of claimed exception to disclosure). You state that the requested records "reciting how many vaccinations have been given in a particular geographical area...and how many doses of smallpox vaccine have been obtained by an emergency response provider...are technical details which could be interpreted to be singling out particular vulnerabilities of the city's and county's 'critical infrastructure' – which includes public assets, systems, and functions vital to public health." After reviewing your statement and the responsive records, we find that the city has failed to explain how the release of this information would reveal technical details identifying vulnerabilities in the city's critical infrastructure. Thus, the requested information is not confidential under section 418.181.

We note, however, that this office has received briefing from the Texas Department of Health (the "department") indicating that the requested information is confidential under section 418.176 of the Government Code. *See* Gov't Code § 552.304 (providing that interested party may submit comments explaining why requested information should or should not be released). Section 418.176 provides:

(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 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.

Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (Vernon) (to be codified at Gov't Code § 418.176). The city indicates that the submitted records are maintained by the Waco-McLennan County Public Health Department. The department explains that the Waco-McLennan County Public Health Department is an emergency response provider under state and national smallpox preparedness plans. The department further explains that the release of requested information would reveal the number of emergency response staff prepared to handle a smallpox outbreak. Based on these representations and our review of the submitted information, we conclude that the submitted records are confidential under section 418.176 of the Government Code. Accordingly, the submitted documents must be withheld from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

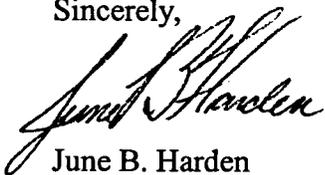
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 186916

Enc: Submitted documents

c: Ms. Cindy Culp
Waco Tribune-Herald
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(w/o enclosures)