



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2004

Ms. Michele Austin
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-0307

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194346.

The City of Houston (the "city") received a request for a specific "information circular" that was sent to the Houston Police Department warning of possible terrorist activity. You indicate that, in accordance with section 1520.5(a) of title 49 of the Code of Federal Regulation, the city has requested a decision from the Transportation Security Administration regarding the portion of the bulletin that pertains to airport security. *See, e.g.,* Open Records Letter No. 2003-8543 (2003) (discussing statutory scheme that requires governmental entities to forward requests for sensitive airport security information to Transportation Security Administration); *see generally English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, this ruling does not address that portion of the bulletin that pertains to airport security. You claim that the remaining portions of the responsive bulletin are excepted from disclosure under section 552.101 of the Government Code in conjunction with provisions of the Texas Homeland Security Act. We have considered the exception you claim and have reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland

Security Act, the Seventy-eighth Legislature 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. You assert, among other things, that the requested information circular is confidential under section 418.177, which provides as follows:

Sec. 418.177. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO RISK OR VULNERABILITY ASSESSMENT.

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.

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 § 418.177). 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). 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 Texas Homeland Security Act 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).

In this instance, you explain that the submitted bulletin is an assessment by the U.S. Department of Homeland Security of the risk of persons, property, and critical infrastructure to acts of terrorism. You further explain that this bulletin was disseminated to local law enforcement entities for the purpose of making them aware of vulnerable areas and to suggest certain precautionary measures. After reviewing your arguments and the information at issue, we conclude that the submitted bulletin is confidential under section 418.177 of the Government Code, and must, therefore, be withheld from disclosure under section 552.101 of the Government Code. Because we are able to make a determination under section 418.177, we need not address your additional arguments against disclosure.

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).

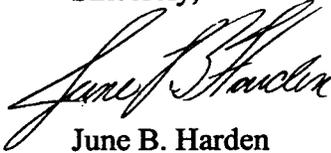
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 194346

Enc: Submitted documents

c: Mr. S. K. Bardwell
The Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)