



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2005

Ms. Rachel Boates
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2005-08941

Dear Ms. Boates:

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# 233470.

The Harris County Facilities and Property Management Department (the "department") received a request for information related to security personnel employed by Weiser Security ("Weiser") and Wackenhut Security ("Wackenhut") who have worked at Harris County (the "county") offices and buildings during the period between January 1, 2000 and July 14, 2005, as well as information related to the county offices and buildings in which Weiser currently provides security personnel. You state the department does not have any information responsive to either the part of the request pertaining to Wackenhut or the part of the request relating to Weiser security personnel prior to April 31, 2005.¹ You also state the department had previously provided the requestor's office with the requested names and birth dates of Weiser security personnel performing duties in county facilities. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, which consists of the following:

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

1. A list of Weiser security personnel with each individual's birth date and beginning and ending dates of employment;²
2. A one-page list indicating the number of Weiser security personnel working at specific county offices and buildings during certain hours; and
3. Several compilations of time sheets.

To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 made confidential by other statutes. You assert the submitted information is confidential under specific provisions of the Texas Homeland Security Act, sections 418.176, 418.177, and 418.181 of the Government Code. Section 418.176 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 staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency[.]

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

²As noted, you state that the department has previously released to the requestor's office the names and birth dates of Weiser security personnel working in county facilities; therefore, we do not address such information in this ruling. *See* Gov't Code § 552.007 (voluntary disclosure of certain information is allowed, unless disclosure is expressly prohibited by law or the information is confidential under law).

(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.

Section 418.181 provides:

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.

Gov't Code §§ 418.176, .177, .181. 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 provisions 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).

As noted, you claim sections 418.176, 418.177, and 418.181 apply to the submitted personnel lists and time sheets. However, upon review of the submitted information and your arguments, you have not demonstrated that any of the submitted information is confidential under the provisions of the Texas Homeland Security Act. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Specifically, the submitted Weiser personnel lists and time sheets are ordinary business documents and you have not established that any of this information is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or criminal activity related to terrorism. *See* Gov't Code §§ 418.176(a), .177(a). Thus, none of the submitted information is confidential under sections 418.176 and 418.177 of the Government Code. Further, the department does not adequately explain, and the submitted personnel lists and time sheets do not reflect, how they identify technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Gov't Code § 418.181. Thus, none of the submitted information is confidential under section 418.181 of the Government Code. We therefore determine that the submitted information is not confidential under the Texas Homeland Security Act and may not be withheld under section 552.101 of the Government Code.

Section 552.108(b) excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would

interfere with law enforcement or prosecution.” See Gov’t Code § 552.108(b)(1). Section 552.108 only applies to records of a law enforcement agency or prosecutor. See Open Records Decision Nos. 439 (1988) (concluding that predecessor statute of section 552.108 only applies to records created by agency, or portion of agency, whose primary function is to investigate crimes and enforce criminal laws), 287 (1981). You have not established that the department is a law enforcement agency for purposes of section 552.108. Thus, we conclude that you have failed to demonstrate the applicability of section 552.108.

However, we note that the submitted time sheets contain social security numbers. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the marked social security numbers contained in the submitted time sheets under section 552.147.⁴ The department must release the remaining submitted information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 233470

Enc. Submitted documents

c: Mr. David Steinhart
KRIV-TV/Fox 26 News
4261 Southwest Freeway
Houston, Texas 77027-7201
(w/o enclosures)