



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-03326

Dear Ms. Chang:

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# 337274.

The City of Houston (the "city") received a request for booking data for all suspects processed through the city's jails after October 1, 2008, and communications sent or received by five named individuals containing any of six specified words. You claim that portions of the information at issue are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 that other statutes make confidential, such as section 418.177 of the Government Code. This section was added to

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.177 provides as follows:

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 a vulnerability assessment does not make the information *per se* confidential under section 418.177. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state that Exhibit 4 is “a confidential analysis and assessment, prepared by the United States Department of Homeland Security, of the vulnerability of the United States to an act of terrorism resulting from activities at one of its borders.” Thus, you contend that the information in Exhibit 4 is confidential under section 418.177. Upon review of your arguments and the information at issue, we agree that Exhibit 4 is related to an assessment maintained by the city of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity, for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the city must withhold the information in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 418.177.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find that the information in Exhibit 2 was used or developed in an investigation of the sexual assault of a child. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, this information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold the information in Exhibit 2 under section 552.101 of the Government Code as information made confidential by law.

Next, you claim the e-mail addresses you have marked are excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). You state that the e-mail addresses at issue are not the type specifically excluded by section 552.137(c), and that the owners have not affirmatively consented to the release of the e-mail addresses. Therefore, the city must withhold the personal e-mail addresses it has marked, in addition to the e-mail addresses we have marked, under section 552.137.<sup>2</sup>

In summary, (1) the city must withhold the information in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 418.177; (2) the city must withhold the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (3) the city must withhold the e-mail addresses it has marked, in addition to the e-mail addresses we have marked, under section 552.137 of the Government Code. The remaining information must be released to the requestor.

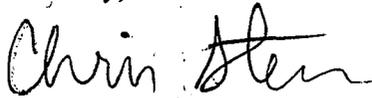
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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 337274

Enc. Submitted documents

c: Requestor  
(w/o enclosures)