



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2009

Mr. Tim Wyatt
Public Information Officer
Collin County
2300 Bloomdale Road, Suite 4154
McKinney, Texas 75071

OR2009-08783

Dear Mr. Wyatt:

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# 347395.

Collin County (the "county") received a request for eight categories of information pertaining to the North Central Texas Fusion System (the "system").¹ You state that you are releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. You also indicate that the request may implicate the interests of the Irving Police Department (the "department") and have notified the department of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor has agreed to the redaction of any "information that [the county] is certain falls under the exception to [the Act] that covers active law enforcement investigations" and "network login names and passwords." Thus, any of this information within the submitted documents is not responsive to the instant request. Our ruling does not

¹The county sought and received clarification of the request. *See Gov't Code § 552.222* (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

address this non-responsive information, and the county need not release it in response to the request.²

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information that is made confidential by other statutes. You raise section 552.101 in conjunction with sections 418.176, 418.177, and 418.181 of the Texas Homeland Security Act, chapter 418 of the Government Code (the “HSA”). Section 418.176 of the Government Code 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;
- (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.

Gov’t Code § 418.176(a). 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. Section 418.181 provides as follows:

²Accordingly, we do not address your argument under section 552.108(a)(1) of the Government Code for the information contained in Appendix E.

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.

Id. § 418.181; *see generally id.* § 421.001 (defining critical infrastructure to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation”). The fact that information may relate to a governmental body’s security concerns or emergency management activities does not make the 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 seek to withhold Appendix C, which consists of a distribution list of the system’s Crime Analyst Listserv, under section 418.176(a)(3) of the Government Code. You state the list of emergency response provider contact information was created and is maintained for sharing information for the purpose of preventing, detecting, and responding to an act of terrorism or related criminal activity. Based upon your representations and our review, we find that Appendix C consists of information that was collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). We therefore conclude that the county must withhold Appendix C under section 552.101 in conjunction with section 418.176 of the Government Code.³

Next, you explain that Appendices G through K consist of reports prepared by the system, the United States Department of Homeland Security, the Texas Department of Public Safety, and other intelligence and law enforcement resources analyzing and assessing various security threats, concerns, and vulnerabilities. You further state that the information at issue relates to acts of terrorism or related criminal activities. Upon review of your arguments and the information at issue, we agree that Appendices G through K are related to assessments maintained by the county 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 county must withhold Appendices G through K under section 552.101 of the Government Code in conjunction with section 418.177.⁴

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the county must withhold Appendix C under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code, and Appendices G through K under section 552.101 in conjunction with section 418.177 of the Government Code.

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, 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 347395

Enc: Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. Les Moore
Irving Police Department
305 N. O'Conner Road
Irving, Texas 75061
(w/o enclosures)