



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2009

Ms. Thao La  
Assistant District Attorney  
Dallas County District Attorney  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2009-10033

Dear Ms. La:

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# 349529.

The Dallas County Department of Health and Human Services (the "county") received a request for three categories of information related to medications possessed by Dallas County first responders.<sup>1</sup> You state that the county does not maintain information responsive to one of the categories of requested information.<sup>2</sup> You claim that the responsive information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We

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<sup>1</sup>You inform us that the county sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

have considered the exceptions you claim and reviewed the submitted representative sample of the responsive information.<sup>3</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 the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 of the HSA provides in 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.

*Id.* § 418.176(a). The fact that information may relate to a governmental body’s security measures 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 of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under the HSA must be accompanied by an adequate explanation of 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 state that release of the requested information “may compromise the [c]ounty’s ability to respond in an emergency to a widespread communicable disease, pandemic influenza or bioterrorism threat [and] would provide a tactical advantage to terrorists at large.” Based on your representations and our review of the submitted information, we find that the submitted information was collected, assembled, or maintained

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<sup>3</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.

by or for the county for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Furthermore, this information relates to a tactical plan of the county's emergency services provider. Accordingly, we conclude that this information is confidential under section 418.176 of the Government Code, and the county thus must withhold this information under section 552.101 of the Government Code.<sup>4</sup>

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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 349529

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>As this ruling is dispositive, we need not address your remaining arguments against disclosure.