



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2009

Mr. Leonard V. Schneider
Attorney for the City of Huntsville
Ross, Banks, May, Cron & Calvin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2009-15934

Dear Mr. Schneider:

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# 360978.

The City of Huntsville (the "city"), which you represent, received a request for 26 categories of information pertaining to a specified deposition at a Public Utility Commission hearing, which includes information regarding the city's Emergency Management Plan. You state you will release some of the requested information to the requestor. You also state that you either do not maintain some of the requested categories of information or that some of it does not exist.¹ Further, you state that you are withholding personal information of peace officers pursuant to the previous determination issued by this office in Open Records Decision No. 670 (2001).² You claim that the submitted information is excepted from disclosure

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²See Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes

under 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we understand you to argue that a portion of the request requires the city to answer questions. We agree that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain responsive information that is not in its possession, so long as no other individual or entity holds such information on behalf of the governmental body that received the request for information. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city has made a good faith effort to do so.

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; [or]

(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[.]

previous determination under section 552.301).

³We 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.

Gov't Code § 418.176(a). Section 418.182 provides in part:

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

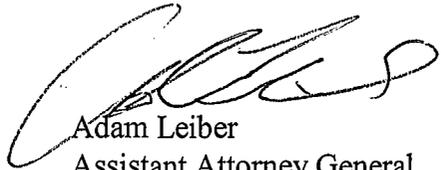
Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns or emergency management activities does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality 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).

You explain that the information at issue consists of the city's emergency plan and checklist and is "part of the city's emergency response plan team that responds to terrorist and biological attacks or related criminal activity and contains specifications and operating procedures." Upon review of your arguments and the submitted information, we find that portions of the submitted information, which we have marked, contain tactical plans detailing the specific actions the city's emergency response providers will take in the event of acts of terrorism or various other disasters. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code. However, we find that the remaining information consists of the city's general plans for responding to an emergency, and does not reveal specific staffing requirements or tactical methods related to the prevention, detection, response, or investigation of an act of terrorism or related criminal activity. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with section 418.176 of the Government Code. Furthermore, we find that you have failed to demonstrate that any of the remaining information is related to the specifications, operating procedures, or location of a security system for the purposes of section 418.182 of the Government Code. Thus, none of the remaining information may be withheld under section 552.101 on this basis. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with section 418.176 of the Government Code. The remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 360978

Enc. Submitted documents

c: Requestor
(w/o enclosures)