



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 29, 2009

Mr. Mark Adams
Office of the General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2009-18343

Dear Mr. Adams:

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# 364067.

The Office of the Governor (the "OOG") received a request for the Governor's travel records for the past four years. You state that the requestor has agreed to allow the OOG to redact access device numbers and personal e-mail addresses from the responsive information. Thus, such information is not responsive to the present request and this ruling will not address that information. You also state that some responsive information has been released to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.151 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the Texas Department of Public Safety (the "department"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge, and we agree, that the OOG did not timely raise section 552.151 in accordance with section 552.301 of the Government Code. *See id.* § 552.301. Pursuant

¹Although you have also raised sections 552.102 through 552.147 of the Government Code, you have not submitted arguments explaining the applicability of any of these claimed exceptions. Therefore, we presume you have withdrawn any exceptions other than sections 552.101 and 552.151. *See* Gov't Code §§ 552.301, .302.

to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302 *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 630 (1994), 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.151 of the Government Code can provide a compelling reason that overcomes the presumption of openness; therefore, we will consider your argument under this section. We will also consider your arguments under section 552.101 of the Government Code, as well as the arguments submitted by the department.

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, including section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 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 a 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). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section 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).

The OOG seeks to withhold information in the submitted documents that reveals the name, identity, and number of members of the Governor's Protective Detail (the "GPD") under section 552.101 in conjunction with section 418.176 of the Government Code. You assert that the information at issue reveals staffing requirements of the GPD, a law enforcement agency, which "is responsible for protecting the safety of the [G]overnor and his family when they travel." You explain that these "staffing requirements are kept confidential because knowledge of the details would make the [G]overnor and other individuals vulnerable to a person seeking to engage in an act of terrorism or related criminal activity." Further, you state that the department does not publicly identify the number of individuals protecting the Governor on a permanent basis or at any particular time. Upon review, we find the OOG has demonstrated that the information at issue relates to staffing requirements 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. Therefore, the OOG must withhold this information, which we have marked, under section 552.101 in conjunction with section 418.176 of the Government Code.

Section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. The OOG asserts that the marked information in Exhibit C must be withheld to ensure the personal safety of the Governor and his family because release of this information would be valuable for someone who intended to cause the Governor harm. Based on these representations and our review, we determine the release of the information at issue in Exhibit C would subject the Governor to a substantial threat of physical harm. Accordingly, the OOG must withhold the marked information in Exhibit C under section 552.151 of the Government Code.

In summary, the OOG must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with section 418.176 of the Government Code. The OOG must also withhold the marked information in Exhibit C under section 552.151 of the Government Code. The remaining submitted information must be released to the requestor. As our ruling is dispositive, we do not address the department's claims.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 364067

Enc. Submitted documents

c: Requestor
(w/o enclosures)