



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2010

Ms. Sharon Alexander  
Associate General Counsel  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2010-02915

Dear Ms. Alexander:

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# 371622.

The Texas Department of Transportation (the "department") received a request for records showing flights using the planes managed by the department's aviation division, including invoices, bills, itineraries, travel logs, and purchase orders for a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.151 of the Government Code.<sup>1</sup> You state, and provide documentation showing, that you have notified three interested third parties, the Texas Department of Public Safety ("DPS"), the Office of the Governor (the "governor"), and the Office of the Attorney General ("OAG"), of their 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 considered

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<sup>1</sup>We note that although you raise all the exceptions under the Act, you make no arguments to support the rest of these exceptions. Therefore, we assume you have withdrawn your claims that the rest of these sections apply to the submitted information.

the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from DPS and the governor. See *id.*

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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.

*Id.* § 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 department asserts that the responsive information reveals staffing requirements of the Governor’s Protective Detail (“GPD”) and the Attorney General’s Protective Detail (“AGPD”). You explain that “knowing how many people are likely to be protecting a government official would be valuable information for someone who intended to cause harm to these public employees.” Further, you state that DPS and the OAG “do not publicly identify the number of individuals protecting the Governor or Attorney General on a

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<sup>2</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.

permanent basis or at any particular time.” Upon review, we find the department has demonstrated that some of 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 department must withhold this information, which we have marked, under section 552.101 in conjunction with section 418.176 of the Government Code.<sup>3</sup> However, we find the remaining information does not relate to staffing requirements of the GPD and the AGPD for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, none of the remaining information may be withheld 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.

*Id.* § 552.151. The department asserts that “disclosure of the number of officers providing security could . . . seriously compromise the safety of the government official such as the [G]overnor or [A]ttorney [G]eneral.” However, upon review, we find none of the remaining information discloses the number of officers providing security or is information that would subject an employee or officer of a governmental body to a substantial threat of physical harm. Accordingly, none of the remaining information may be withheld under section under section 552.151 of the Government Code.

In summary, the department 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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free,

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

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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 371622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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