



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2012

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department, Legal Division
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-04948

Dear Ms. Bull:

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# 450283 (Arlington P.D. Ref. 6514).

The City of Arlington (the "city") received a request for seven categories of information pertaining to briefings referenced by a named individual in a specified sworn statement. You state the city does not possess some of the requested information.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic 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).

²Although you originally also raised section 552.103 of the Government Code as an exception to disclosure, you did not submit to this office written comments stating the reasons why this section would except any of the submitted information, nor have you identified any information you seek to withhold under this exception. We therefore assume you no longer assert this exception. *See Gov't Code* §§ 552.301, .302.

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we note portions of the submitted information are not responsive to the instant request for information because they were created after the date the city received the request. As previously noted, the Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp.*, 562 S.W.2d 266; ORD Nos. 605 at 2, 555 at 1, 452 at 3, 362 at 2. Thus, this information, which we have marked, is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

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:

2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(2). 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).

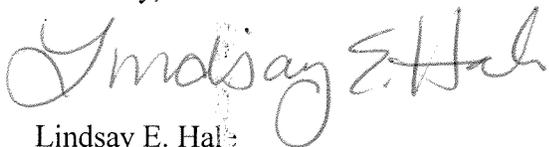
You explain the submitted information was collected by the city’s police department and relates to its tactical plan for investigating and responding to terrorism and other related criminal activities. Based on your representations and our review, we find the submitted responsive information is confidential under section 418.176(a)(2) of the Government Code. Accordingly, the city must withhold the submitted responsive information under section 552.101 in conjunction with section 418.176 of the Government Code.⁴

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

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 45 283

Enc. Submitted documents

c: Requestor
(w/o enclosures)