



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2013

Mr. Stephen A. Cumbie  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2013-02281

Dear Mr. Cumbie:

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# 479343 (PIR No. W021967).

The City of Fort Worth (the "city") received a request for personnel records pertaining to a named individual. You state you are releasing the majority of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section encompasses information protected by other statutes, such as section 418.176 of the Texas Homeland Security Act, chapter 418 of the Government Code (the "HSA"). Section 418.176 of the Government Code provides, in pertinent 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:

...

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the [emergency response] provider.

*Id.* § 418.176(a)(3). 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 HSA. *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 HSA 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 state the information you have marked consists of an internal direct line to a city fire station. You represent this information is maintained for the purpose of responding to all manner of emergency situations, including natural disasters, terrorist or biological attacks, and related criminal activity. You state if the telephone number at issue is "made public, then these first responders' telephones could become overwhelmed and communication between [f]ire [d]epartment personnel and other [c]ity departments during emergency situations could be hampered." Based upon your representations and our review, we find the telephone number at issue was collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). Accordingly, the city must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code.

We note the requestor is a representative of the Texas Department of State Health Services (the "DSHS"). The DSHS has informed this office that the requestor seeks the requested information as part of an investigation the DSHS is conducting pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 of the Health and Safety Code provides the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code]." Health & Safety Code § 773.0612(a). The DSHS states the submitted information pertains to an emergency medical technician licensed under chapter 773 of the Health and Safety Code. The DSHS indicates the information is

needed to enforce section 157.36(b) of title 25 of the Texas Administrative Code. *See* 25 T.A.C. § 157.36(b). Because the submitted information is directly related to an emergency medical technician and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612 of the Health and Safety Code applies to the submitted information. However, because some of the requested information is specifically protected from public disclosure by section 418.176(a)(3) of the Government Code, we find there is a conflict between this statute and the right of access afforded to the DSHS under section 773.0612 of the Health and Safety Code.

We note where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 773.0612 of the Health and Safety Code gives a general right of access to all information related to emergency medical services personnel being investigated by the DSHS. In contrast, section 418.176(a)(3) of the Government Code specifically protects a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of an emergency response provider that was collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. Furthermore, section 418.176 has its own release provisions, which specifically permit release to certain parties and in certain circumstances that do not include the DSHS's request in this instance. *See* Gov't Code § 418.183 (providing for disclosure of information confidential under section 418.176 in certain instances). We therefore conclude the confidentiality provided by section 418.176(a)(3) is more specific than the general right of access provided by section 773.0612. Thus, notwithstanding the provisions of section 773.0612 of the Health and Safety Code, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code.

You also assert portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.139 of the Government Code. However, section 552.139 is a general exception to disclosure under the Act and a specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the

requested information, the city may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.139 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code. The city must release the remaining information to the DSHS pursuant to section 773.0612 of the Health and Safety Code.<sup>1</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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 479343

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>The requestor has a special right of access to the information being released. If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.