



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2013

Ms. Tiffany B. Duncan  
For Avery Independent School District  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2013-03446

Dear Ms. Duncan:

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# 481284.

The Avery Independent School District (the "district"), which you represent, received a request for a specific e-mail. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.137, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's procedural responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). We note this office does not count holidays when calculating a governmental body's deadlines under the Act. The district received the request for information on December 14, 2012. You inform us the district was closed from December 24, 2012, through January 6, 2013. Thus, the district was required to request a decision from this office and state the applicable exceptions by January 11, 2013. We note the district did not raise section 552.111 of the Government Code until its brief on January 17, 2013. Thus, the district failed to raise section 552.111 within the applicable deadline. Generally, if a governmental body fails to timely raise an

exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Accordingly, the district may not withhold the submitted information under section 552.111 of the Government Code. Nonetheless, we will consider the district's timely raised exceptions under sections 552.101, 552.137, and 552.152 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism or related criminal activity. Section 418.177 provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may relate to a governmental body's security concerns 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).

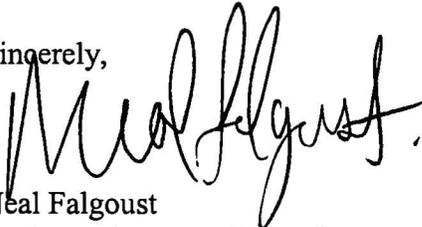
You state the submitted e-mail "details [the superintendent's] vulnerability assessment concerning the district." You also explain the e-mail was written "to assess the risk or vulnerability of the [d]istrict and its employees and students to an act of terrorism or related criminal activity. The e-mail details areas of concern where the [d]istrict may be vulnerable to those and other safety emergencies." Based on your representations and our review, we conclude the submitted information was collected, assembled, or maintained by or for the district for the purpose of preventing, detecting, or investigating an act of terrorism or related

criminal activity and relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. As our ruling is dispositive, we do not consider your remaining claimed exceptions.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 481284

Enc. Submitted documents

c: Requestor  
(w/o enclosures)