



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2013

Mr. David Timberger
Division Director - General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2013-13334

Dear Mr. Timberger:

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# 495089 (PIR No. 13-12178).

The Texas Commission on Environmental Quality (the "commission") received a request for certain information pertaining to any businesses in the Tyler, Texas area, including those businesses located in specified counties, that store the same chemicals that contributed to the West, Texas explosion, particularly ammonium nitrate. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend the requested information is confidential under section 552.101 of the Government Code in conjunction with sections 418.178 and 418.181 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.178 and 418.181 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. The fact information may generally be related to an emergency preparedness or a security system 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 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 confidentiality provision, a governmental body must adequately explain how the responsive information falls within the scope of the HSA. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Section 418.178 of the Government Code provides:

(a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* ORD 649 at 3. We understand you to argue the requested information is confidential under section 418.178(b)(2)(A) because it reveals information regarding facilities that store hazardous chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Upon review, we agree some of the requested information, which we have marked, is confidential under section 418.178 of the Government Code. Therefore, the commission must withhold the information we have marked under section 552.101 in conjunction with section 418.178 of the Government Code. We note section 418.178(b)(2)(A) is applicable only to information indicating the specific location of certain materials that are more than likely to assist in the construction or assembly of such a weapon. The remaining information you seek to withhold does not indicate the specific locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Accordingly, because the commission has not explained how section 418.178 encompasses any of the remaining information, the commission may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 418.181 of the Government Code provides that “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” Gov’t Code § 418.181. Upon review, we find you have not demonstrated any of the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See id.* §§ 418.181, 421.001. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 495089

Enc. Submitted documents

c: Requestor
(w/o enclosures)