



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Mr. Wesley N. Hinch
County Attorney
Office of the County Attorney
County of Liberty
P.O. Box 9127
Liberty, Texas 77575

OR2014-14557

Dear Mr. Hinch:

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# 534540.

The Liberty County Sheriff's Office (the "sheriff's office") received a request for information concerning the purchase, acquisition, and storage of plastic explosives at the county gun range. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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. You contend the submitted information is confidential under section 552.101 in conjunction with section 418.178 of the Government Code.

¹Although you acknowledge you failed to timely request a ruling from this office, your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure; therefore we will address the applicability of this exception. See Gov't Code §§ 552.301, .302.

Section 418.178 was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act and provides as follows:

(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(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.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* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You explain the information at issue reveals information pertaining to explosive materials that is more than likely to assist in the construction or assembly of an explosive weapon. Upon review, we find the information we have marked is confidential under section 418.178. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.178(b)(1) of the Government Code. However, the sheriff's office has failed to demonstrate the remaining information is confidential under section 418.178 of the Government Code. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis. As no other exceptions to disclosure have been raised, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 534540

Enc. Submitted documents

c: Requestor
(w/o enclosures)