



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2014

Mr. John P. Beauchamp
General Counsel for the Commission
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2014-18111

Dear Mr. Beauchamp:

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# 538962.

The Texas Commission on Law Enforcement (the "commission") received a request for the names of school districts that have had a designated employee undergo marshal training. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor only seeks the identity of participating school districts, which we have marked. Accordingly, the remaining submitted information is not responsive to the instant request. The commission need not release non-responsive information in response to this request, and this ruling will not address that information.

¹Although you also raised sections 552.101 through 552.153 of the Government Code as exceptions to disclosure in your brief, you have only submitted arguments in support of sections 552.101 and 552.152. Therefore, we assume you have withdrawn your claims under the remaining exceptions. *See* Gov't Code §§ 552.301, .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

request. The commission need not release non-responsive information in response to this request, and this ruling will not address that information.

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 section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides, in relevant part, as follows:

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 measures 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 of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.177 must be accompanied by an adequate explanation of 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 seek to withhold the responsive information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. However, upon review, we find the commission has failed to establish the responsive information was collected, assembled, or is maintained by or for the commission 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, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Thus, the commission has not established the applicability of section 418.177 of the Government Code to the responsive information, and the commission may not withhold the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 1701.260 of the Occupations Code, which provides, in relevant part, as follows:

(a) The commission shall establish and maintain a training program open to any employee of a school district or open-enrollment charter school who holds a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person's name, the person's date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person's place of employment.

...

(l) Identifying information about a person collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 1701.260(a)-(b), (l). You assert the responsive information is identifying information for the purposes of section 1701.260. However, upon review, we find the responsive information does not consist of the identifying information about a person collected under section 1701.260. Accordingly, we conclude the commission may not withhold the responsive information under section 552.101 in conjunction with section 1701.260 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information made confidential by the common-law physical safety exception. The Texas Supreme Court has recognized a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112 (Tex. 2011) (holding "freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). Pursuant to the common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. Upon review, we find you have not demonstrated the release of the responsive information would subject any person to a substantial threat of physical harm. Accordingly, the commission may not withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find you have not demonstrated the release of the responsive information would subject an employee or officer of the commission to a substantial threat of physical harm. Accordingly, the commission may not withhold the responsive information under section 552.152 of the Government Code. As you raise no further exceptions to disclosure, the commission must release the responsive information we have marked.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 538962

Enc. Submitted documents

c: Requestor
(w/o enclosures)