



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2014

Mr. Charles H. Weir
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2014-18515

Dear Mr. Weir:

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# 540887 (City File No. W030627).

The City of San Antonio (the "city") received a request for the Tier Two chemical reporting information for a named facility. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified the third party of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from the third party. We have considered the submitted arguments and reviewed the submitted information.

You explain the city maintains the requested information through the Tier Two Chemical Reporting Program, a program implemented in accordance with the federal Emergency Planning and Community Right-to-Know Act ("EPCRA") and the Texas right-to-know laws. *See* 42 U.S.C. §§ 11011-11050; Health & Safety Code §§ 505.001-.017, 506.001-

.017, 507.001-.013. As explicitly stated in the federal provisions, the EPCRA does not preempt any state or local law. *See* 42 U.S.C. § 11041(a). Thus, we look to the statutory scheme established under Texas law to determine the disposition of the requested information. Facilities subject to Tier Two chemical reporting requirements must report required data concerning Tier Two chemicals to the Department of State Health Services (“DSHS”), the local emergency planning committee, and the local fire chief. Health & Safety Code §§ 505.006(c), (e), 506.006(c)-(d), 507.006(c), (e). It is this information, that is, information held by the city as part of the Tier Two Chemical Reporting Program, that we address in this ruling. This ruling does not impact the legal right of citizens to access hazardous chemical information directly from a facility for community right-to-know purposes. *Id.* §§ 505.007(a), 506.007(a). Sections 505.007(b) and 506.007(b) require any facility subject to chapter 505 or chapter 506 of the Health and Safety Code to furnish, upon request, the facility’s existing workplace chemical list within ten working days of the date of receipt of a written request. *Id.* §§ 505.007(b), 506.007(b).¹ Violations of chapter 505, chapter 506, or chapter 507 may be reported to DSHS for investigation and possible administrative penalty. *Id.* §§ 505.010, 506.010, 507.009.

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. 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

¹Chapter 507 of the Health and Safety Code, which applies to non-manufacturing facilities, does not contain a direct access provision.

(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 be related to biological toxins does not make such 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 contend the submitted information is confidential under section 418.178(b) because it reveals information regarding a specific facility that stores hazardous chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. We understand the location of threshold quantities of hazardous substances and extremely hazardous substances at any Texas facility must be reported to the city under the Tier Two Chemical Reporting Program. You assert releasing the submitted information would identify the location of dangerous substances and could assist in the illegal acquisition of certain substances for the purpose of the construction of an explosive weapon or weapon of mass destruction. Typically, only that information which would reveal the location of these hazardous chemicals is protected under section 418.178(b). However, in this instance, the requestor seeks the Tier Two report for one specified facility. Thus, because the location of the facility at issue is already known to this requestor, withholding only that information which would indicate the location of the hazardous chemicals would not effectuate the purpose of section 418.178 and would, in fact, result in the release of confidential information. Accordingly, we conclude the submitted information is confidential under section 418.178 of the Government Code.

We recognize the public's legitimate interest in obtaining information concerning hazardous substances stored in Texas communities. However, we must follow the plain language of section 418.178 which, through its unconditional mandate of confidentiality, does not allow us to take into account the public interest that exists in the release of this information. Thus, we conclude the submitted information is confidential under section 418.178 of the Government Code, and the city must withhold it under section 552.101 of the Government Code. However, as stated above, this ruling does not impact the legal right of citizens to access a facility's existing workplace chemical list directly from any facility covered under chapter 505 or chapter 506 of the Health and Safety Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 540887

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Leroy Ghaffari
QA/EHS Manager
Blue Line Corporation
3443 East Commerce Street
San Antonio, Texas 78220
(w/o enclosures)