



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2014-20849

Dear Mr. Kopp:

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# 542323 (COSA File No. W030994).

The City of San Antonio (the "city") received a request for 1) applications submitted by the San Antonio Police Department (the "department") for equipment through the United States Department of Defense 1033 Program, including whether the application was granted, denied, or granted in part; 2) 1033 Program inventories; and 3) applications submitted by the department for funding through the United States Department of Homeland Security's ("DHS") Homeland Security Grant Program or Urban Area Security Initiative Program, including whether the application was granted, denied, or granted in part. You state the city will release information responsive to items 1 and 2 of the request. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks in item 3 applications submitted by the department for funding through the DHS's Homeland Security Grant Program or Urban Area Security Initiative Program, including whether the application was granted, denied, or granted in part. The information you seek to withhold consists of a draft Homeland Security Grant Program application, and the application reflects it was not intended for submission to the Federal Emergency Management Agency ("FEMA"). Thus, we understand this application was not

submitted by the department to DHS or FEMA. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Accordingly, as the city has submitted this information as responsive to the request, we will address your claimed exceptions for this 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 information at issue under the Texas Homeland Security Act. You state the city’s proximity to the Mexico border “leaves [city] residents susceptible to the dangers of human smuggling, drug trafficking, and the treat of terrorist groups entering our country.” You state the information at issue “identifies specific threats and risks, and the requested additional resources to enable more effective responses to critical incidents or terrorist attacks within the region.” You state “by revealing the details that [the city] is required to submit to justify receiving grant money, specific regional response capabilities for [the city] and the San Antonio Urban Area would be revealed.” Upon review, we find the information at issue 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 city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.¹

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 542323

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.