



January 29, 2015

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-01824

Dear Ms. Cost:

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# 551905 (DPS PIR# 14-4669).

The Texas Department of Public Safety (the "department") received a request for a list of the school districts participating in the school marshal program. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of some of the submitted information may implicate the interests of the Texas Commission on Law Enforcement (the "commission"). Accordingly, you state, and provide documentation showing, you notified the commission of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the commission. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor only seeks the identity of participating school districts. We agree the information the department has indicated is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

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).

The commission raises section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code for the responsive information. However, upon review, we find the commission has failed to establish the responsive information was collected, assembled, or is maintained by or for the department 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 department 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.

...

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the [department];

...

(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), (j)(1), (l). The commission and the department 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 department may not withhold the responsive information under section 552.101 in conjunction with section 1701.260 of the Occupations Code.

The commission raises the common-law physical safety exception which is also encompassed by section 552.101 of the Government Code. 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 the commission has not demonstrated the release of the responsive information would subject any person to a substantial threat of physical harm. Accordingly, the department 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. The commission raises section 552.152 of the Government Code for the responsive information. Upon review, we find the commission has 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 department may not withhold the responsive information under section 552.152 of the Government Code. As no further exceptions have been raised, the department must release the responsive information.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 551905

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)