



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2015

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2015-07827

Dear Ms. Parker:

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# 560968.

The Texas Department of Transportation (the "department") received two requests for specified state aviation records during specified periods of time.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We note the department notified the Office of the Governor (the "governor's office") of the request for information. *See* Gov't Code § 552.304 (providing interested third party may submit comments stating why information should or should not be released). We have received comments from the governor's office. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note the information we have marked is not responsive to the instant request for information because it does not fall within the specified time period. This ruling does not

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume that 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.

address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we note portions of the submitted information were the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-05868 (2015), 2013-20895 (2013), and 2013-17638 (2013). In those rulings, we determined the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter Nos. 2015-05868, 2013-20895, and 2013-17638 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the submitted arguments against disclosure of the information not subject to the prior rulings.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential, including section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov’t Code § 418.176(a). The fact that information may generally be related to a governmental body’s security concerns or emergency preparedness does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any

confidentiality statute, a governmental body asserting section 418.176 must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue reveals staffing requirements of the security detail on state flights. You explain the security detail is a law enforcement agency section of the Texas Department of Public Safety that accompanies the flights “for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity.” You assert “knowing how many security personnel are likely to be protecting a government official or representative would be valuable information for someone who intended to cause harm to those individuals.” You assert “knowing which prominent public figures travel without security detail would reveal security risks as it could also allow an individual to detect patterns in travel and thereby endanger the lives of the security detail and the individuals they are assigned to protect.” Based on these representations and our review, we find the department has demonstrated that some of the information at issue relates to staffing requirements maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.³ However, we find the department has not established the remaining information relates to staffing requirements for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.152 of the Government Code provides:

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.

Id. § 552.152. You assert revealing the names of the security detail personnel and whether security accompanied the flight or the number of officers providing security would “jeopardize the safety of the undercover officers and state officials and representatives.” However, upon review, we find none of the remaining information discloses the names or the number of officers providing security or is information that would subject an employee or officer of a governmental body to a substantial threat of physical harm. Accordingly, none of the remaining information may be withheld under section 552.152 of the Government Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter Nos. 2015-05868, 2013-20895, and 2013-17638 as previous determinations and withhold or release the identical information in accordance with those rulings. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The department must release the remaining 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 560968

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Mr. Jordan Hale
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(w/o enclosures)