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ATTORNEY GENERAL OF TEXAS

April 24, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-07928

Dear Ms. Pemberton:

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# 562255 (Killeen ID# W015468).

The City of Killeen (the "city") received a request for city contracts with G4S Technology LLC ("G4S"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and protected under rule 12.5 of the Rules of Judicial Administration.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it is not a contract with G4S. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

You argue the submitted information is exempt from disclosure under rule 12.5(b) of the Rules of Judicial Administration. Rule 12 governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov't Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a "judicial record" as "a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]" TEX. R. JUD. ADMIN. 12.2(d). In this instance, the responsive information consists of

¹Although you do not explicitly raise section 552.101 of the Government Code, we understand you to raise this exception based on the substance of your argument.

information held by the city. Because this information is maintained by the city, it does not constitute a judicial record subject to the Rules of Judicial Administration and instead is information subject to the Act. *Id.*; Gov't Code §§ 552.002(a), .003(1)(A)(iii). Rule 12 does not apply to records or information to which access is controlled by the Act. TEX. R. JUD. ADMIN. 12.3(a)(4). Therefore, as the submitted responsive information is subject to the Act, it may only be withheld if it is excepted from disclosure under an exception in the Act.

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 information protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.177 provides 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 be related to a governmental body's security concerns or emergency preparedness does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Moreover, 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 state the submitted responsive information consists of contracts with G4S for the provision of security measures at the Killeen–Fort Hood Regional Airport and the Killeen Municipal Court. You assert the security measures at issue are in place to "ensure the security and safety of the public and those employed by the [city,] the security of the buildings[,] emergency operational protocols[,] and to prevent acts of terrorism or related criminal activity." You further assert the contracts at issue provide detailed information related to security devices within the buildings. Upon review, we find the information we marked 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. Therefore, the city must withhold the information we marked under

section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. However, we find the city has failed to establish the remaining information was collected, assembled, or is maintained by or for the city 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 city has not established the applicability of section 418.177 of the Government Code to the remaining responsive information, and the city may not withhold the information under section 552.101 of the Government Code on that basis.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The remaining responsive information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/bhf

Ref: ID# 562255

Enc. Submitted documents

c: Requestor
(w/o enclosures)