



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 21, 2015

Ms. Sandra Kim
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767

OR2015-14852

Dear Ms. Kim:

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# 572778.

The Austin Police Department (the "department") received a request for information relating to People for the Ethical Treatment of Animals ("PETA") or any individual associated with, or alleged, claimed, or suspected to be affiliated with PETA. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which you have marked, as well as the additional information we have marked, is not responsive to the instant request for information because it does not pertain to PETA or any individual associated with, or alleged, claimed, or suspected to be affiliated with PETA. 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 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 418.176 of the Government Code provides, in relevant 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 staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(1)-(2). 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 generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of 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 this section 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 includes “details regarding detection devices used by the department in order to detect threats to [c]ity, [s]tate, and private facilities.” You further state the information at issue “includes a risk assessment that assists in determining the department’s vulnerability to the broadest number of hazards possible.” Based on your representations and our review, we find the information we have marked relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act

of terrorism or related criminal activity. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.¹ However, we find you have not demonstrated how any of the remaining responsive information relates to staffing requirements or a tactical plan of an emergency response provider for purposes of section 418.176, or 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, you have not demonstrated the applicability of section 418.176 or section 418.177 to any of the remaining responsive information. Accordingly, the department may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 418.176 or section 418.177 of the Government Code.

We note some of the remaining responsive information is subject to section 552.117 of the Government Code.² Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 and 552.1175 of the Government Code.³ *See id.* § 552.117(a)(2). Section 552.117 also protects a peace officer's personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001) (section 552.117(a)(2) excepts from disclosure peace officer's cellular telephone or pager number if officer pays for cellular telephone or pager service). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service. The department must release the remaining responsive information.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 572778

Enc. Submitted documents

c: Requestor
(w/o enclosures)