



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 10, 2015

Ms. Danielle R. Folsom  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2015-18914

Dear Ms. Folsom:

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# 578748 (GC No. 22458).

The City of Houston (the "city") received a request for the name and mailing address of each facility that filed a Tier Two report with the city's fire department (the "department"). 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 representative sample of information.<sup>1</sup>

You explain the Texas Commission on Environmental Quality (the "commission")<sup>2</sup> maintains the requested information through the Tier Two Chemical Reporting Program, a program implemented in accordance with the federal Emergency Planning and Community

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<sup>1</sup>We assume 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.

<sup>2</sup>The Eighty-Fourth Legislature amended chapters 505, 506, and 507 of the Health and Safety Code effective September 1, 2015, to transfer from the Texas Department of State Health Services to the commission the powers, duties, obligations, and liabilities relating to chapters 505, 506, and 507 of the Health and Safety Code. Act of May 25, 2015, 84th Leg., R.S., ch. 515, § 37(a)(1), 2015 Tex. Sess. Law Serv. 1878, 1888 (Vernon).

Right-to-Know Act (“EPCRA”) and the Texas right-to-know laws. *See* 42 U.S.C. §§ 11011-11050; Health & Safety Code ch. 505-507. As explicitly stated in the federal provisions, the EPCRA does not preempt any state or local law. *See* 42 U.S.C. § 11041(a). Thus, we look to the statutory scheme established under Texas law to determine the disposition of the requested information. Facilities subject to Tier Two chemical reporting requirements must report required data concerning Tier Two chemicals to the commission, the local emergency planning committee, and the local fire chief. Act of May 25, 2015, 84th Leg., R.S., ch. 515, §§ 6-7, 16, 26-27, 2015 Tex. Sess. Law Serv. 1878, 1880-1881, 1883, 1885-1886 (Vernon) (to be codified as amendments to Health & Safety Code §§ 505.006(c), (e)-(e-2), 505.0061, 506.006(c)-(d-2), 507.0006(c), (e)-(e-2), 507.0061). Sections 505.006(h), 506.006(g), and 507.006(h) provide that all Tier Two reporting documents filed with the commission are subject to the Act. Health & Safety Code §§ 505.006(h), 506.006(g), 507.006(h). Thus, the statutory language makes clear that Tier Two information filed with the commission is subject to all provisions of the Act, including the Act’s exceptions. It is this information, that is, information held by the commission as part of the Tier Two Chemical Reporting Program, that we address in this ruling. This ruling does not impact the legal right of citizens to access hazardous chemical information directly from a facility for community right-to-know purposes. *Id.* §§ 505.007(a), 506.007(a). Sections 505.007(b) and 506.007(b) require any facility subject to chapter 505 or chapter 506 of the Health and Safety Code to furnish, upon request, the facility’s existing workplace chemical list within ten working days of the date of receipt of a written request. *Id.* §§ 505.007(b), 506.007(b).<sup>3</sup> Violations of chapter 505, chapter 506, or chapter 507 may be reported to the commission for investigation and possible administrative penalty. Act of May 25, 2015, 84th Leg., R.S., ch. 515, §§ 12, 21, 31, 33-35, 2015 Tex. Sess. Law Serv. 1878, 1882, 1884, 1887-1888 (Vernon) (to be codified as Health & Safety Code §§ 505.018, 506.018, 507.014 and Water Code §§ 7.052(b-4), .1021, .1851).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You contend the submitted information is confidential under section 552.101 in conjunction with section 418.178 of the Government Code. Section 418.178 was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act and provides as follows:

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

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<sup>3</sup> Chapter 507 of the Health and Safety Code, which applies to non-manufacturing facilities, does not contain a direct access provision.

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

*Id.* § 418.178. The fact that information may be related to a governmental body's security concerns, biological toxins, 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). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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 argue the submitted information is confidential under section 418.178(b) because it reveals information regarding facilities that store hazardous chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. You state that a terrorist or other criminal element could exploit the requested information in planning mass attacks, in order to incite panic and enhance the likelihood of death among emergency responders and members of the public. You further state that public release of this information would significantly impact the city's ability to deliver public safety services to citizens in the event of an act of terrorism or related criminal activity. We recognize the public's legitimate interest in obtaining information concerning hazardous substances stored in Texas communities. However, we must follow the plain language of section 418.178 which, through its unconditional mandate of confidentiality, does not allow us to take into account the public interest that exists in the release of this information. Accordingly, because the requested information would indicate the specific locations of the facilities at issue, we conclude the submitted information is confidential under section 418.178 of the Government Code. Therefore, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. However, as stated above, this ruling does not impact the legal right of citizens to access this information directly from any facility covered under chapter 505 or chapter 506 of the Health and Safety Code.

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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 578748

Enc. Submitted documents

c: Requestor  
(w/o enclosures)