



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2016

Mr. Craig Radtke
Director of Legal Affairs
Boerne Independent School District
123 West Johns Road
Boerne, Texas 78006

OR2016-02552

Dear Mr. Radtke:

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# 596520.

The Boerne Independent School District (the "district") received a request for (1) all reports pertaining to lockdown drills or safety drills over a specified time period; (2) any reports associated with or generated because of the drills; and (3) a list of dates, times, and campuses for the drills for the specified time period. You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the instant request for information because this information does not pertain to lockdown or safety drills within the specified time period or was created after the date the request was received. This ruling

¹We 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.

does not address the public availability of the non-responsive information, which we have marked, and that information need not be released 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;

(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.

Id. § 418.176(a)(1). 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. Section 418.182 provides, in relevant part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security

system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). 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 these sections must adequately explain how the responsive information falls within the scope of the provisions. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You inform us the submitted information consists of specific information related to security procedures and responses for fire, lockdown, and shelter in place drills conducted by district schools. You state disclosure of the information at issue creates a risk to the district, its faculty and staff, and students. Based on your representations and our review, we find the information we have marked was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism and relates to an assessment of the risk or vulnerability of critical infrastructure to an act of terrorism. Accordingly, the district 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.

We understand you to assert the remaining responsive information consists of tactical plans for the prevention, detection, response, or investigation of terrorism or similar activities subject to section 418.176 of the Government Code. We also understand you to assert the remaining responsive information includes the operating procedures the district has enacted to protect its buildings from criminal activity or terrorism subject to section 418.182 of the Government Code. However, upon review, we find you have not demonstrated any of the remaining information at issue relates to tactical plans of emergency response providers or relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the district 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 418.182 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 the requirements of Section 552.021 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 state the remaining responsive information should be withheld under section 552.152 of the Government Code. Although you generally state release of the information at issue would create a risk to district faculty and staff, upon review, we find you have failed to demonstrate release of the information at issue would subject a district employee or officer to a substantial risk of physical harm. Accordingly, the district may not withhold any of the remaining responsive information under section 552.152 of the Government Code.

In summary, the district 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 district must release the remaining 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 596520

Enc. Submitted documents

c: Requestor
(w/o enclosures)