



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2016

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

OR2016-03312

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# 598023 (Killeen ID# W017796).

The City of Killeen (the "city") received a request for the request for proposals for security upgrades for the Killeen-Fort Hood Regional Airport and the resulting contract between G4S Technology LLC ("G4S") and the city, and the request for proposal for security upgrades for the Killeen City Hall annex and the resulting contract between G4S and the city. You state you do not have information responsive to a portion of the request. You state you have released some information responsive to the first portion of the request. 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.<sup>1</sup> You also state release of the submitted information may implicate the proprietary interests of G4S. Accordingly, you state and provide documentation showing, you have notified G4S of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and

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<sup>1</sup>Although 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.

explain applicability of exception to disclosure under the circumstances). We have considered your arguments and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we understand you to argue the information is not subject to disclosure because it was marked confidential by G4S. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Next, 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 submitted information consists of 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 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 information consists of a proposal and contract with G4S for the provision of security measures at the Killeen City Hall annex. You assert the security measures at issue are in place to "ensure the security of the building" and that the information at issue provides detailed information related to security devices within the building. Upon review, we find the information we have 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 have 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 information, and the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

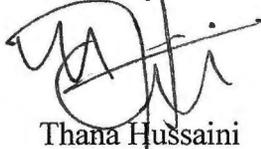
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from G4S. Thus, G4S has not demonstrated it has a protected proprietary interest in any of the remaining information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the any of the remaining information on the basis of any proprietary interests G4S may have in the information.

In summary, the city 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 city 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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 598023

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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