

May 18, 2016

Mr. Stanton Strickland
Deputy Commissioner
Legal Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-11456

Dear Mr. Strickland:

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# 610880 (TDI Ref. No. 170412).

The Texas Department of Insurance (the "department") received a request for reports from the state fire marshal's office during a specified time period relating to Texas agribusinesses that store ammonium nitrate.¹ 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.

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 information at issue 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:

¹You inform us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

(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:

(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

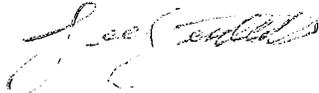
(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You argue portions of the information at issue are confidential under section 418.178(b) because they reveal the location, quantity, and security measures relating to ammonium nitrate, which has been and may continue to be used in the construction or assembly of an explosive weapon. Upon review, we find the information we have marked is confidential under section 418.178 of the Government Code. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. However, the remaining information does not indicate the specific locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Thus, we find the department has failed to demonstrate the remaining information is confidential under section 418.178 of the Government Code, and the department may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis. As the department does not raise another exception to disclosure, the department 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, 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 610880

Enc. Submitted documents

c: Requestor
(w/o enclosures)