



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Ms. Patricia A. Adams
Town Attorney
Town of Trophy Club
100 Municipal Drive
Trophy Club, Texas 76262

OR2016-12392

Dear Ms. Adams:

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# 612322 (PIR No. 2016-042).

The Town of Trophy Club (the "town") received a request for a copy of the town's Emergency Management Plan, information regarding disaster training for the past five years, and all training records of staff or elected officials for the National Incident Management System for the past four years. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor contends some of the requested information was previously released to three other individuals. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .012; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Section 552.007 of the Government Code does not prohibit an agency from withholding similar types of information that are not

the exact information that has been previously released. We are unable to determine whether or not any of the submitted information is the exact information that may have been previously released. Regardless, the town claims the information is excepted from disclosure pursuant to section 552.101 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See* Gov't Code § 552.101; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will consider the town's arguments for the information at issue.

Next, we note some of the submitted training certificate information is not responsive to the instant request because it does not pertain to the five year time period specified by the requestor. This ruling does not address the public availability of non-responsive information, and the town is not required to release non-responsive 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, such as section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in 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 the 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). 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 seek to withhold the submitted emergency management plan, mock training exercises, and responsive training certificates under section 418.176. You state the submitted emergency management plan contains “sensitive information provided to first responders and key staff members of the [t]own and is part of the [t]own’s emergency preparedness plan.” You contend disclosure of the submitted information would reveal “tactical information, mock training exercises, identification, [and] contact information” of the town’s police and fire emergency services personnel and key staff who serve as the emergency response team for the town. Further, you state the information at issue “has been assembled and maintained by the [t]own for such purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity[.]” Based on your representations and our review, we find you have established most of the submitted information relates to the staffing requirements of an emergency response provider, relates to a tactical plan of the provider, or consists of a list of telephone numbers of the provider under section 418.176. *See id.* § 418.176(a)(1)-(3). Therefore, except for the training certificate information, the town must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find no portion of the responsive training certificate information is confidential pursuant to section 418.176 of the Government Code and the town may not withhold it under section 552.101 of the Government Code on that basis.

We note some of the responsive training certificate information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The town may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the town must withhold the partial social security numbers in the responsive training certificate information under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024, the town may not withhold the partial social security numbers at issue under section 552.117(a)(1) of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, except for the training certificate information, the town must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The town must withhold the partial social security numbers in the responsive training certificate information under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. The town must release the remaining responsive training certificate information.²

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

Ref: ID# 612322

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Regardless of the applicability of section 552.117, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).