



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2016

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840

OR2016-14875A

Dear Mr. Moore:

This office issued Open Records Letter No. 2016-14875 (2016) on June 29, 2016. We have examined this ruling and determined we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on June 29, 2016. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 630094.

Texas A&M AgriLife Research ("TAMALR") received a request for all ammonium nitrate inspection forms and reports during a specified time period.<sup>1</sup> You state you have released some of the requested information. You claim some of the submitted information is excepted

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<sup>1</sup>You state TAMALR sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You further state TAMALR sent this requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615.

from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note the requestor excluded any business addresses, telephone numbers, or other information, except for zip codes, identifying a business from the scope of the request. Accordingly, this information is not responsive to the instant request. Our ruling does not address the public availability of information that is not responsive to the request, and TAMALR is not required to release that 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.” *Id.* § 552.101. You contend the information you have marked 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:

(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.

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<sup>2</sup>We note TAMALR did not comply with section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(b). Nevertheless, because section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of section 552.101 to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>3</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.

*Id.* § 418.178. The fact that information may be related to biological toxins does not make such information *per se* confidential under section 418.178 of the Government Code. 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 contend the information you have marked is confidential under section 418.178(b)(2)(A) of the Government Code because it indicates the specific location of hazardous chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Upon review of your arguments, we find you have demonstrated releasing the zip codes in this instance would identify the facilities at issue. Thus, we find the information you have marked is confidential under section 418.178(b)(2)(A) of the Government Code. Therefore, TAMALR must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.178(b)(2)(A) of the Government Code.<sup>4</sup> As no other exceptions to disclosure have been raised, the remaining responsive information must be released.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 630094

Enc. Submitted documents

c: Requestor