



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Mr. Craig Radtke
General Counsel
Boerne Independent School District
123 West Johns Road
Boerne, Texas 78006

OR2016-18005

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# 625275.

The Boerne Independent School District (the "district") received a request for information pertaining to district school buses, fire drill reports, fire safety inspections, water inspections, and Texas School Safety Center reports. You state the district will release some of the requested information. You state the district has no information responsive to a portion of the request.¹ You claim the submitted information is 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.²

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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We 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 those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 37.108 of the Education Code, which provides, in part:

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a comparable public or private entity.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

Educ. Code § 37.108(b), (c-1). You inform us the information submitted as TAB 2 was developed, collected, or produced during a safety and security audit conducted under section 37.108(b). *See id.* § 37.108(b). We understand none of the exceptions in subsection (c-2) are applicable to the information at issue. *See id.* § 37.108(c-2) (listing types of documents relating to district's multihazard emergency operations plan that are subject to disclosure). Based on your representations and our review, we conclude the district must withhold the information submitted as TAB 2 under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.³

Section 552.101 of the Government Code also encompasses information protected by the Texas Homeland Security Act (the "HSA"). As part of 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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Id. § 418.177. 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 remaining 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 remaining the information 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 remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

In summary, the district must withhold TAB 2 under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 625275

Enc. Submitted documents

c: Requestor
(w/o enclosures)