



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2016

Ms. Julie P. Doshier
Counsel for the City of Farmers Branch
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2016-04668

Dear Ms. Doshier:

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# 599728 (Farmers Branch Ref. Nos. 74689 and 74838).

The City of Farmers Branch (the "city"), which you represent, received a request for the following information pertaining to a specified company: (1) contracts, budget documents, invoices, and receipts; (2) communications regarding contracts pertaining to the North Texas Emergency Communications Center (the "center"); (3) communications regarding implementation of communication equipment; (4) communications regarding delays in installation and implementation of equipment at the center; and (5) budget documents outlining expenditures for operation city emergency operations and a 9-1-1 communications center for a specified time period.¹ You state you have released some information to the requestor. You claim some of 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.

Initially, you state some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-18318 (2013). In that ruling, we determined the city must withhold the

¹You state the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Additionally, you state, and provide documentation showing, the requestor has withdrawn his request for information responsive to parts 2, 3, and 4 of the request.

information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code and under section 552.110(a) of the Government Code, and release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter No. 2013-18318 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument against release of the submitted information that is not encompassed by Open Records Letter No. 2013-18318.

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 (“HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. You assert portions of the submitted information are confidential pursuant to section 418.181 of the Government Code, which provides, “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” *Id.* § 418.181. The fact that information may relate to a governmental body’s security concerns or security system does not make the 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). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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 inform us the information you have marked relates to a public safety radio system (the “radio system”) to be owned and used by the city, the Town of Addison, the City of Carrollton, and the City of Coppell (collectively, the “cities”). You explain the radio system will be used by the cities for police, fire, emergency medical service, and public works communications. You argue, and we agree, the radio system is critical infrastructure because it “will be used for radio communications by fire, police, and emergency medical responders for the [c]ities as well as public works person[ne]l responsible for operating and maintaining public water, sewer, and street systems in the event of an emergency or potential response to a terrorist attack.” *See id.* § 421.001 (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public

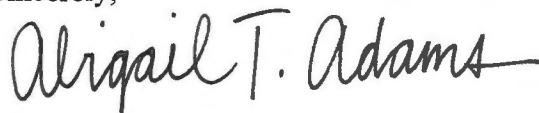
health and safety, economy, or morale of the state or the nation”). You state release of the information at issue could lead to potential alteration, damage, erasure, or inappropriate use of the radio system, which could interfere with ongoing law enforcement practices and cripple emergency responders’ communication systems in the event of a terrorist attack. Based on your arguments and our review of the information at issue, we find the information you have marked identifies technical details of particular vulnerabilities of the city’s communication systems to an act of terrorism. Thus, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the city must rely on Open Records Letter No. 2013-18318 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 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, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 599728

Enc. Submitted documents

c: Requestor
(w/o enclosures)