



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2016

Mr. Matthew Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2016-26515

Dear Mr. Grove:

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# 633997.

The County of Fort Bend (the "county") received a request for information pertaining to the construction of county levees and information pertaining to water flow studies. 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 representative sample of information.¹

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. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.181 of the Government Code 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

¹We 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.

vulnerabilities of critical infrastructure to an act of terrorism.” *Id.* § 418.181; *see also 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, and functions vital to the state or the nation”). The fact that information may relate to a governmental body’s security concerns or emergency management activities 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 a 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 state the submitted information relates to the county’s levee system, which is part of the county’s critical infrastructure. You state the submitted information contains technical details of the “levee designs, weaknesses, vulnerabilities[,] materials used, specifications, and strength of the levees[.]” You state the levee system was “designed to prevent catastrophic flooding” and the release of the submitted information could allow a potential terrorist to “damage the levee system” by targeting specific points in the levee structure. Based on your representations and our review, we agree some of the submitted information, a representative sample of which we indicated, identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the information we indicated must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, the county has failed to establish the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the county may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.181

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the county must withhold the routing and bank account numbers we marked under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records

²The 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).

that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The county must withhold the routing and bank account numbers we marked under section 552.136 of the Government Code. The county must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 633997

Enc. Submitted documents

c: Requestor
(w/o enclosures)