



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Mr. Joseph R. Crawford  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2016-26561

Dear Mr. Crawford:

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# 638140 (GC No. 23785).

The City of Houston (the "city") received a request for information submitted by Houston Waterworks Team ("HWT") for the city's Northeast Water Purification Plant (the "plant"). The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code, but does not take a position as to whether the remaining information is excepted from disclosure under the Act.<sup>1</sup> The city also states, and provides documentation showing, it notified HWT of the city's receipt of the request for information and of HWT's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

---

<sup>1</sup>We note the city did not comply with the requirements of section 552.301 of the Government Code in raising section 552.101. *See* Gov't Code § 552.301(b), (e). Nevertheless, because section 552.101 of the Government Code makes information confidential, it can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the claim of the city under that section.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, HWT has not submitted to this office any reasons explaining why the requested information should not be released. Accordingly, we have no basis for concluding the submitted information constitutes proprietary information of that third party, and the city may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

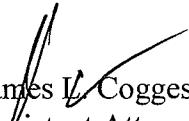
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 418.181 of the Government Code which provides, "[t]hose documents or portions 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 generally be related to emergency preparedness does not make the information *per se* confidential under section 418.181. *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 sections 418.181 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).

The city explains the information it has indicated reveals the location of intake equipment and other important components of the plant. The city asserts, and we agree, the plant consists of critical infrastructure. *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"). The city objects to the release of the information it has indicated because it identifies particular vulnerabilities of the plant to an act of terrorism. Upon review, we find the city has demonstrated the information it has indicated is confidential under section 418.181 of the Government Code. Thus, the city must withhold the information it has indicated 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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 638140

Enc. Submitted documents

c: Requestor  
(w/o enclosures)