



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2016

Mr. Jonathan Kaplan
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2016-27108

Dear Mr. Kaplan:

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# 638101 (COSA File No. W139842-092316).

The City of San Antonio (the "city") received a request for copies of any new inquiries or applications pertaining to telecommunication facilities and locations of antennas during a specified year. 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 information.

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. Section 552.101 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, 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 the submitted information is made confidential by sections 418.181 and 418.182 of the Government Code. Section 418.181 provides,

Those 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. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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 seek to withhold the submitted information under sections 418.181 and 418.182. You state the submitted information relates to the city's telecommunication infrastructure, specifically the city's radio towers. You assert, and we agree, the city's radio towers are critical infrastructure. *See generally 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 explain the release of the submitted information could be useful to terrorists in gaining control of the city's radio towers in order to disrupt traffic flow. Further, you state the city's police department and fire department as well as other emergency response personnel need to respond to emergency situations as quickly as possible in order to maintain public health and safety. You argue a disruption in the traffic flow of their radio systems would hinder their ability to quickly respond to emergency situations and could potentially threaten the health and safety of the general public. Based on your representations and our review, we find the city has demonstrated the release of some of the submitted information would identify the technical details of particular vulnerabilities of the city's telecommunications infrastructure to an act of terrorism. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ However, you do not explain how the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Moreover, you have not demonstrated the information at issue consists of access codes and passwords or reveals the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find the city may not withhold any of the remaining information under section 552.101 of the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Government Code in conjunction with section 418.181 or section 418.182 of the Government Code.

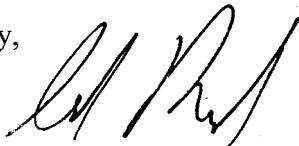
Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Upon review, we find the routing number and bank account number in the remaining information consist of access device numbers. Therefore, the city must withhold the information we have marked under section 552.136(b) of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must withhold the information we have marked under section 552.136(b) of the Government Code. The remaining 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, 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

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²This office 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).

Ref: ID# 638101

Enc. Submitted documents

c: Requestor
(w/o enclosures)