



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2017

Ms. Akilah Mance
Counsel for the City of Tomball
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2017-01466

Dear Ms. Mance:

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# 643241 (Ref. No. COT16-025).

The City of Tomball (the "city"), which you represent, received a request for utility data for a specified location. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. This section encompasses information that is made confidential by other statutes. You raise section 552.101 in conjunction with section 418.181 of the Homeland Security Act (the "HSA"). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.181 provides:

¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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. The fact that information may relate to a governmental body's security measures 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 of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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).

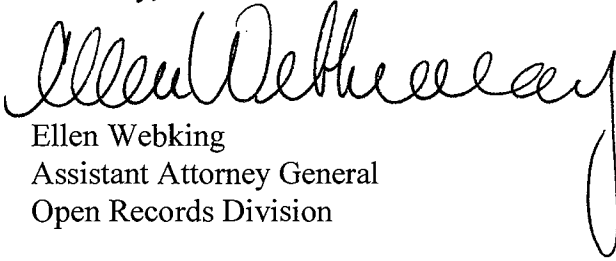
You state the submitted information "contains technical details of the [c]ity's water supply, sanitary sewer systems, and gas lines which are critical infrastructure." You contend "release of the submitted data and diagrams could provide a potential terrorist with details regarding the locations and dimensions of the pipes that are part of the [c]ity's water supply, sanitary sewer lines, and gas lines[.]" You further contend, and we agree, the city's water supply, sanitary sewer systems, and gas lines are part of the city's critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2) (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 that public release of the submitted information "could provide the means by which the water supply, sanitary sewer systems, and gas lines can be easily compromised, interfered with, or incapacitated," and thus put the public health and safety of the city's residents at risk. Based on your representations and our review of the information at issue, we find that you have demonstrated the applicability of section 418.181 to the submitted information. Thus, the city must withhold the submitted information under section 552.101 of the Government Code on the basis of section 418.181 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,

A handwritten signature in cursive script, appearing to read "Ellen Webking". The signature is written in black ink and is positioned above the typed name and title.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 643241

Enc. Submitted documents

c: Requestor
(w/o enclosures)