



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2017

Mr. Joseph Harney
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-04303

Dear Mr. Harney:

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# 647644 (COSA # W146731-111716).

The City of San Antonio (the "city") received a request for e-mails pertaining to the installation of fiber optic cable by the specified company during a specified time period.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹We note the city received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, 302.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-03412 (2017). In that ruling, we concluded (1) the city must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code; (2) if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the city must withhold a certain cellular telephone number under section 552.117(a)(1) of the Government Code; and (3) must release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2017-03412 was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter No. 2017-03412 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, 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). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Section 552.101 of the Government Code excepts from public 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.

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).

The city asserts sections 418.181 and 418.182 for portions of the submitted information, stating the information shows "the location of a portion of the [c]ity's fiber optic cable network, including the location of Google Fiber facilities." The city explains a person with criminal or terroristic intent can gain access to the city's fiber optic network by breaking into control boxes that are operated via the city's fiber optic network, disconnect the fiber optic link, insert a device, and reconnect the link. The city argues release of the information at issue would put in jeopardy the security of the city's fiber optic network and all entities that connect to it. Based on these representations and our review, we agree portions of the information at issue fall within the scope of section 418.181. Accordingly, 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.³ However, the city has failed to establish any portion of the remaining information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Additionally, we find the city has failed to demonstrate any of the remaining information at issue 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. Thus, we find the city has not demonstrated the applicability of section 418.181 or section 418.182 to the remaining information at issue, and the city may not withhold it under section 552.101 of the Government Code on either of these basis.

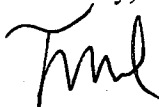
In summary, the city must continue to rely on Open Records Letter No. 2017-03412 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The remaining information must be released.

³As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

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,



Timothy Neal
Assistant Attorney General
Open Records Division

TN/sb

Ref: ID# 647644

Enc. Submitted documents

c: Requestor
(w/o enclosures)