



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 28, 2017

Mr. David T. Ritter  
Counsel for City of McKinney  
Brown and Hofmesiter, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2017-06377

Dear Mr. Ritter:

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# 652892 (City ID# G2757).

The City of McKinney (the "city"), which you represent, received a request for all lease, license, or other agreements under which private entities are allowed to install, operate, and maintain antennae and other communications equipment on a specified city water tower structure. You indicate the city released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue the submitted information is excepted from disclosure under section 552.101 of the Government Code, which 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. As part of the Texas Homeland Security Act ("HSA"), 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 portions of the information at issue, which you marked, are confidential pursuant to 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 relate to a governmental body’s security concerns 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 the 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 inform us the information at issue details wireless communications equipment on city-owned infrastructure, particularly a water tower you assert is critical infrastructure. Upon review, we agree the information at issue pertains to critical infrastructure for purposes of section 418.181 of the Government Code. *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”). You assert release of the information at issue would compromise the safety and security of the water tower. Based on your arguments and our review of the information at issue, we find the information we marked identifies technical details of particular vulnerabilities of the city’s critical infrastructure to an act of terrorism. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, you have failed to establish any portion of the remaining information 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). Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.136 states “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the city must withhold the submitted insurance policy, bank account, and bank routing numbers you marked under section 552.136 of the Government Code. However, we find the information we marked for release consists of bank check numbers that are not excepted from disclosure under section 552.136 and may not be withheld on that basis.


In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Except for

the information we marked for release, the city must withhold the information you marked under section 552.136 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

Ref: ID# 652892

Enc. Submitted documents

c: Requestor  
(w/o enclosures)