



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 10, 2017

Ms. Jacque Cullom  
Assistant City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

OR2017-10065

Dear Ms. Cullom:

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# 656881 (COSM PIR No. W001753-021817).

The City of San Marcos (the "city") received a request for a specified report. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of Eka Systems ("Eka"). Accordingly, the city states, and provides documentation showing, it notified Eka of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 considered the submitted arguments 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. The city raises section 552.101 in conjunction with section 418.181 of the

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<sup>1</sup>As of the date of this letter, this office has not received comments from Eka explaining why any of the submitted information should not be released.

Government Code.<sup>2</sup> Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). 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. 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).

The city states, and we agree, its water and electric systems constitute critical infrastructure under the HSA. *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 explains the submitted information consists of propagation studies related to the city’s automated meter infrastructure. The city asserts the submitted information could be used to disrupt water or electric service delivery in the city. Additionally, the city asserts “[a]ny significant disruption in the reliable delivery of clean water . . . could endanger the lives of residents and bring to a halt economic activity and even government services harming the public health and safety of the [c]ity.” Based on the city’s representations and our review, we agree the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with 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.

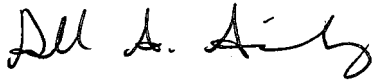
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>2</sup>Although the city cites to section 481.182 of the Government Code in its brief, we understand the city to raise section 481.181 of the Government Code based on the substance of its argument.

[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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/sb

Ref: ID# 656881

c: Requestor

1 Third Party