



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2017

Ms. Lisa Ruiz
Paralegal
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-13354

Dear Ms. Ruiz:

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# 661114 (ORR# C002193).

The City of Dallas (the "city") received a request for all e-mails between a specified city department and T-Mobile during a specified time period. The city states it will release some of the requested information. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of T-Mobile. Accordingly, the city states, and provides documentation showing, it notified T-Mobile of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *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 received comments from T-Mobile. We have reviewed the submitted arguments and the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, the city states some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-13349 (2017) (CVM's ID# 660291, due 6/5/17) and 2017-13350 (2017) (AKC's ID# 660386, due 6/5/17). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter Nos. 2017-13349 and 2017-13350 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

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 encompasses information made confidential by other statutes. The city and T-Mobile claim the submitted information is confidential under section 771.061 of the Health and Safety Code. Section 771.061 makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" and information "that a service provider, third party, or other entity voluntarily furnishes at the request of a governmental entity in providing 9-1-1 service[.]" Health & Safety Code § 771.061(a). The city indicates it operates a 9-1-1 system. The city argues the submitted information was used for the purpose of providing computerized 9-1-1 service and was obtained from third-party telecommunications services providers. Based upon the city's representations and our review, we find some of the submitted information consists of information that was required to be furnished to the city by a telecommunications service provider or information that was voluntarily furnished by a service provider at the request of the city in providing computerized 9-1-1 service. This information, which we have marked, is confidential under section 771.061 of the Health and Safety Code and the city must withhold it under section 552.101 of the Government Code.² However, upon review, we find the city and T-Mobile have failed to demonstrate any portion of the remaining information was furnished to the city by a telecommunications service provider in providing computerized 9-1-1 service. Accordingly, the remaining information is not confidential under section 771.061 of the Health and Safety Code and the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 771.0711 of the Health and Safety Code, which makes confidential "[i]nformation that a wireless service provider is required to furnish to a governmental entity in providing 9-1-1 service[.]" Health & Safety

²As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

Code § 771.0711(h). The city argues the remaining information is confidential under section 771.0711(h). As previously noted, no portion of the remaining information was furnished to the city by a wireless service provider. Thus, the remaining information is not confidential under section 771.0711, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. The submitted information contains telephone numbers and addresses of 9-1-1 callers. Provided the information at issue was furnished by a service supplier, we find the city must generally withhold the telephone numbers and addresses we have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.³ We note, however, to the extent the marked addresses are the addresses of a cellular telephone antenna and are not the originating addresses of 9-1-1 callers, this information is not made confidential by section 772.218 and may not be withheld under section 552.101 of the Government Code on that basis. Furthermore, we find the remaining information at issue does not contain the originating telephone number or address of a 9-1-1 caller furnished by a service supplier. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “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. The city asserts the remaining information is made confidential by the HSA. Section 418.176 of the HSA provides, in relevant part,

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

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176. Section 418.177 provides,

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. 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 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 a 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).

The city generally argues the remaining information is confidential under sections 418.176, 418.177, and 418.181 of the Government Code. However, the city does

not explain any portion of the information at issue was collected, assembled, or is maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to staffing requirements of an emergency response provider, relates to a tactical plan of the provider, consists of a list or compilation of pager or telephone numbers of the provider, or relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Additionally, we understand the city to assert, and we agree, the city's 9-1-1 call center is critical infrastructure for the 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 security, governance, public health and safety, economy, or morale of state or nation). However, the city and T-Mobile have not demonstrated the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.176, section 418.177, or section 418.181 of the Government Code.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). The city argues the release of the remaining information will enable adversaries, cyber attackers, and cyber activists to obtain and learn the city's cyber defensive strategies, products, and tactics that are used to protect the city's information systems and assets. Upon review, however, we find the city has not demonstrated the remaining information relates to the city's computer network security, or to the design, operation, or defense of the city's computer network as contemplated in section 552.139(a). Further, the city has not demonstrated the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the city may not withhold any of the remaining information under section 552.139 of the Government Code.

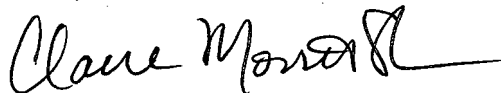
T-Mobile argues the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We have marked a representative sample of e-mail addresses that are subject to section 552.137 of the Government Code and that are not excluded by subsection (c). Therefore, the city must withhold the types of personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. To the extent the information we marked consists of the originating telephone numbers and addresses of 9-1-1 callers, the city must withhold the telephone numbers and addresses we marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the types of personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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, 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 black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 661114

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)