



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2017

Mr. Renatto Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-18437

Dear Mr. Garcia:

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# 670834 (Ref. No. 636).

The City of Corpus Christi (the "city") received a request for specified service agreements and three specified categories of information pertaining to backflow test records. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor seeks only three specified categories of information pertaining to the requested backflow test records. Thus, the portions of the submitted documents that do not consist of these specified categories are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

Initially, the city informs us a similar request for information was previously submitted to this office, as a result of which this office issued Open Records Letter No. 2017-05396 (2017). We note the submitted responsive information may have been the subject of the previous request. In Open Records Letter No. 2017-05396, we determined the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. You state there has been no change in the

law, facts, or circumstances on which the previous ruling was 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 No. 2017-05396 as a previous determination and withhold the identical information in accordance with that ruling. *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). However, to the extent the information in the instant request is not identical to the information responsive in Open Records Letter No. 2017-05396, we will address the city's argument against 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. 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 certain information related to terrorism confidential. You assert the submitted list is confidential under 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 assert, and we agree, the city's water system is critical infrastructure. *See generally 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 explain backflow prevention assembly devices are devices required by the city for locations that pose a potential health hazard of a physical or toxic nature to the water system. You state the submitted responsive information identifies the physical locations of backflow prevention assembly devices throughout the city. You state that, with the release of the submitted responsive information, contaminants could be introduced into the city's water system. Based on your representations and our review, we find you have demonstrated the submitted responsive information identifies the technical details of particular vulnerabilities of the city's water system to an act of terrorism. Thus,

the submitted responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, 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 No. 2017-05396 as a previous determination and withhold the identical information in accordance with that ruling. The submitted responsive 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/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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 670834

Enc. Submitted documents

c: Requestor
(w/o enclosures)