



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Mr. Matthew K. Behrens
Assistant General Counsel
El Paso Water Utilities – Public Service Board
P.O. Box 511
El Paso, Texas 79961-0511

OR2017-18677

Dear Mr. Behrens:

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# 672321.

The El Paso Water Utilities – Public Service Board (the “board”) received a request for the maps, plans, and designs for the Memphis Elevated Water Storage Reservoir project. You state you released some information. 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.

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. You raise section 552.101 in conjunction with section 418.181 of the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of 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).

You contend, and we agree, the water distribution system for the City of El Paso (the "city") is part of the city's critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2) (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 submitted information consists of plans, designs, and maps of an elevated water storage reservoir. You explain the submitted information details how the reservoir connects to the city's overall water system and shows "potential weaknesses in the [c]ity's water distribution system[.]" You further state release of this information would allow individuals to access the water contained in the reservoir, "introduce a contaminant in the [c]ity's water system[.]" and "exploit[] or impair the operation of the structure[.]" Based on your representations and our review of the information at issue, we find that you have demonstrated the applicability of section 418.181 to the submitted information. Thus, the board must withhold the submitted information under section 552.101 of the Government Code on the basis of 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 672321

Enc. Submitted documents

c: Requestor
(w/o enclosures)