



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 6, 2017

Ms. Megan R. Santee  
Denton, Navarro, Rocha, Bernal & Zech, P.C.  
Counsel for City of Kenedy  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2017-22862

Dear Ms. Santee:

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# 678881.

The City of Kenedy (the "city"), which you represent, received two requests from different requestors for specified information pertaining to a specified project and specified City Hall meeting minutes. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city has not submitted information pertaining to the specified City Hall meeting minutes. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 Government Code. 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 state the city relies “solely on a network of water wells and transport lines from those wells for its potable water supply.” You explain the submitted information contains “the specific location, fluid level measurements, bottom hole pressure measurements, rate capacity, as well as casing and pump information for that system of wells.” You contend, and we agree, the city’s water supply system 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”). You state that public release of the submitted information “would . . . greatly increase the vulnerability of the water supply,” and put the public health and safety at risk. 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 information we have marked. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code.<sup>1</sup> However, we find the city has failed to demonstrate the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, we find the city may not withhold any of the remaining information under

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the "presence or absence of natural resources." In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* Open Records Decision No. 669 (2000). Upon review, we conclude the city has failed to demonstrate any portion of the remaining information is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the city may not withhold any portion of the remaining information under section 552.113(a)(2) of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code on the basis of section 418.181 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](#), 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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 678881

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)