



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2018

Ms. Mary Kay Fischer
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2018-03166

Dear Ms. Fischer:

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# 694968 (ORR W008437-111317).

The City of Friendswood (the "city") received a request for specified plat plan drawings. You state the city has made some of the requested information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and protected by copyright law. We have considered your 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. Section 552.101 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. You assert the submitted information is made confidential by section 418.181 of the Government Code. 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 Texas Homeland Security Act. *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 Texas Homeland Security Act 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 inform us Exhibit B-2 depicts "the exact locations of the city's fire hydrants, water lines, manholes, [and] sewer lines in this area[.]" You assert, and we agree, the city's water, sewer, and fire suppression systems are critical infrastructure. *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"). You state release of the information at issue "could provide a potential terrorist with details . . . which the terrorists could use to introduce contaminants, hinder the city's ability to deliver water service, cause extreme environmental damage or cause widespread flooding." You further argue "release of the information at issue would identify the technical details of particular vulnerabilities of the city's fire hydrant system to an act of terrorism." Based on your arguments and our review, we find you have demonstrated release of Exhibit B-2 would identify the technical details of particular vulnerabilities of the city's water, sewer, and fire suppression systems to an act of terrorism. Thus, the city must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

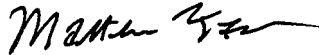
You contend the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 694968

Enc. Submitted documents

c: Requestor
(w/o enclosures)