



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 17, 2019

Mr. Neal Falgoust  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2019-01546

Dear Mr. Falgoust:

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# 746831 (Ref. Nos. C012614, C012632, C012737, C012780, C012790, X001256, C012806, C012807, C012808, C012944, X001266, C013033, X001287, C013325, C013327, C013465, C013487, C012805, C0122782, C12724, & X001286).

The City of Austin (the "city") received twenty-one requests from eleven different requestors for information pertaining the water boil notice issued on a specified date.<sup>1</sup> You state you will release some of the requested information to the requestors. You also state you do not have any information responsive to request C012807.<sup>2</sup> You claim some of the submitted

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<sup>1</sup>The city indicates it sought and received clarification of the information requested from some of the requestors. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ.

information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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 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 portions of the submitted information, which you have marked, are made confidential by sections 418.176 and 418.181 of the Government Code. Section 418.176 provides in part:

(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:

...

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

*Id.* § 418.176(a)(3). Section 418.181 of the Government Code 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

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App.—San Antonio 1978, writ *dism’d*); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>We 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.

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 claim the information at issue, which you have marked, consists of “a list of telephone numbers used by the [c]ity’s Water Department and Homeland Security and Emergency Management Department for the purpose of responding to a public emergency.” You further state these telephone numbers “are part of the emergency operations centers run by the [c]ity during events that require a critical response, including terroristic or criminal activity.” Based on your representations and our review, we conclude the information at issue was collected, assembled, or maintained by or for the authority for the purpose of responding to an act of terrorism or related criminal activity and consists of a list of telephone numbers of emergency response providers. *See id.* § 418.176(a)(3). Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code.

You state the remaining information you have marked reveals details of the city’s water treatment infrastructure. We agree the city’s water treatment infrastructure is critical infrastructure for purposes of section 418.181. *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 state release of the descriptions and diagrams at issue would provide information on how to undermine regional water systems. Based on your representations and our review of the information at issue, we find the city has demonstrated the release of the information at issue would identify the technical details of particular vulnerabilities of the city’s water treatment system to an act of terrorism. Thus, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

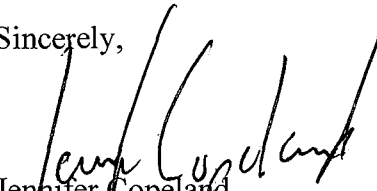
In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The remaining information must be released.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/eb

Ref: ID# 746831

Enc. Submitted documents

c: 11 Requestors  
(w/o enclosures)