



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2019

Mr. Robert Schell
Assistant District Attorney
Navarro County
300 West 3rd Avenue, Suite 301
Corsicana, Texas 75110

OR2019-04297

Dear Mr. Schell:

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# 750341.

The Navarro County Elections Office and the Navarro County District Attorney's Office (collectively, the "county") received a request for e-mails sent to the county from the United States Department of Homeland Security ("DHS") during a specified time period and any incident reports regarding a specified issue. You state you have released some of the requested information. You claim some of 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 representative sample of information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the county received the request for information. This ruling does not address the public availability of any

¹We 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 that those records contain substantially different types of information than that submitted to this office.

information that is not responsive to the request and the county is not required to release such information in response to this request.²

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 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 a 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 state the responsive information consists of data provided to the county by DHS regarding potential threats to county election systems. We understand you to assert the county’s election systems are part of the county’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 also state that public release of the information at issue would provide “a roadmap to those who would seek to damage, disrupt, influence and/or disparage [the county’s] election systems.” Based on your representations and our review of the information at issue, we find the responsive information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, we find that you have demonstrated the applicability of section 418.181 to the information at issue. Thus, the county must withhold

²As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

the responsive information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.³

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/som

Ref: ID# 750341

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.