



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2019

Ms. T. Trisha Dang  
Assistant City Attorney  
City of Sugar Land  
P. O Box 110  
Sugar Land, Texas 77487-0110

OR2019-07147

Dear Ms. Dang:

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# 754613 (PIR No. W005761).

The City of Sugar Land (the "city") received a request for specified plans for a named location. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Cullinan Park Conservancy; Infrastructure Associates; KSA; Vernon G. Henry and Associates, Inc.; Wallis Concrete, LLC; Ward, Getz & Associates; and White Oak Studios. Accordingly, you state, and provide documentation showing, you notified these parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). You also state you notified the City of Houston of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any portion of the submitted information related to those third parties on the basis of any proprietary interest they may have in the information.

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 information you marked 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 information at issue under section 552.113(a)(2) of the Government Code.

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 the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. 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 the 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 information you marked consists of the locations and technical details of city radio towers, as well as “the locations of oil and natural gas pipelines, water, wastewater, storm water, sanitary and sewage disposal, electrical, telephone and natural gas service lines, lift stations, water plant and tank, sewage treatment plant, drainage, electricity and storm easements, airport runway and its lighting system.” You state the radio towers at issue “interface with the [c]ity’s radio communications system, which provide the primary communications for all public safety responders within the city.” You further state release of the information at issue “could expose the critical infrastructure [to] potential vulnerabilities by showing the points in the critical infrastructure where the placement of explosives, corrosives, or contaminant[s] can cause the most damage to the city.” We agree the information at issue constitutes critical infrastructure. *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”). Based on your representations and our review, we find the city has demonstrated the release of the information you marked would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Thus, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses section 191.004 of the Natural Resources Code provides:

(a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

(b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004. You state the remaining information you marked consists of “information and location[s] of sites or item[s] declared to be a state archeological landmark.” Upon review, we find the information at issue qualifies as “information specifying the location of a site or item declared to be a state archeological landmark” for the purposes of section 191.004. Therefore, we conclude the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code.

We note some of 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 the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code. The city must release the remaining information; however, any information subject to copyright may only be released 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/jxd

Ref: ID# 754613

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

8 Third Parties  
(w/o enclosures)