



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2019

Ms. Kasey Feldman-Thomason
General Counsel
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

OR2019-09545

Dear Ms. Feldman-Thomason:

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# 758674 (PUC ID# 2019-01-016).

The Public Utility Commission of Texas (the "commission") received a request for information pertaining to Docket 44019, Item 314. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of the Lower Colorado River Authority Transmission Services Corporation ("LCRA"). Accordingly, you state, and provide documentation showing, you notified LCRA of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received comments from LCRA. We have considered the submitted arguments and reviewed the submitted information.

Initially, LCRA asserts some of the submitted information is not responsive to the request for information. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. The commission has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the commission has made a good-faith effort to relate the request to information within its possession or control.

Accordingly, we will determine whether the commission must release the submitted information under the Act.

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 protected by other statutes. As part of the Texas Homeland Security Act (“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. The city asserts the submitted information is confidential under section 418.181 of the Government Code, which provides “[t]hose 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).

LCRA asserts, and we agree, the electrical transmission lines at issue 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”). LCRA explains the submitted information contains shapefiles and locational coordinate information relating to the transmission of electric power services. LCRA asserts release of this information could make critical infrastructure vulnerable to terrorism or criminal activity. Based on LCRA’s arguments and our review of the submitted information, we find LCRA demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the commission must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ The commission 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.

¹As our ruling is dispositive, we need not address LCRA’s remaining argument against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/gw

Ref: ID# 758674

Enc. Submitted documents

c: Requestor
(w/o enclosures)