



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2019

Mr. Ryan D. Pittman
Counsel for the City of Frisco.
Abernathy, Roder, Boyd, and Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070-1210

OR2019-09601

Dear Mr. Pittman:

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# 758864.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to mosquito traps laid out by the city. You claim 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 information.

Section 552.101 of the Government Code excepts from public 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 contend the submitted information is confidential under section 552.101 in conjunction with section 418.178 and section 418.181 of the Government Code. Section 418.178 provides as follows:

- (a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. 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 generally relate to biological agents or security concerns does not make the information *per se* confidential under section 418.178 or section 418.181. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 or section 418.181 must adequately explain how the responsive records fall within the scope of the provision at issue. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information reveals the specific location of biological agents that could be used in the construction of a biological weapon. Upon review, we find the information we marked is confidential under section 418.178 of the Government Code. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code.¹ However, we find you have not demonstrated the remaining information is confidential under section 418.178 of the Government Code, and the city thus may not withhold this information under section 552.101 on that basis.

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

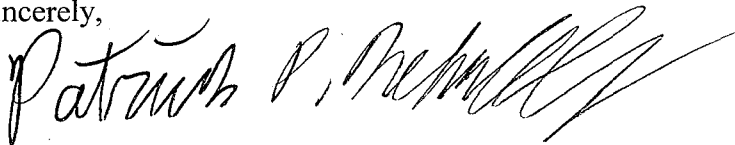
You seek to withhold the remaining information under section 418.181. You state the information “identifies particular vulnerabilities and details relating to [the city’s] mosquito spraying areas and traps.” However, we find you failed to demonstrate the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *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”). Consequently, we find the city may not withhold the remaining information 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 we marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. The city 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.

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/jxd

Ref: ID# 758864

Enc. Submitted documents

c: Requestor
(w/o enclosures)