



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2019

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2019-13863

Dear Ms. Pemberton:

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# 764932 (PIR#: W028034).

The City of Killeen (the "city") received a request for information pertaining to a specified water tank, including the redacted lease agreement. You state the city has released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ You also state its release may implicate the proprietary interests of ArchComm, Inc.; Solis-Kanak & Associates, Inc.; KGI Wireless, Inc.; EPB Associates, Inc.; and AllPro Consulting Group, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their right to submit arguments to this office. *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). We have considered your claimed exception and reviewed the submitted information.

¹We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the city pursuant to that request.

Section 552.101 of the Government Code excepts “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 (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides as follows:

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 submitted information reveals “detailed information that identifies technical details of layouts [of] sanitary sewer, water[,] and drainage infrastructures.” You argue, and we agree, the city’s water and sanitary sewer utility systems are critical infrastructure for purposes of section 418.181 of the Government Code. *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 state release of this information “would divulge vulnerabilities of the critical infrastructure to an act of terrorism.” Based on your representations and our review, we find you demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of the city’s critical infrastructure to an act of terrorism. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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,

A handwritten signature in black ink that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 764932

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5Third Parties
(w/o enclosures)