



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 24, 2019

Ms. Mary Kay Fischer  
City Attorney  
City of Friendswood  
910 South Friendswood Drive  
Friendswood, Texas 77546

OR2019-17132

Dear Ms. Fischer:

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# 771786 (ORR# W010366).

The City of Friendswood (the "city") received a request for building, fire, and health department records related to a specified address. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> The city also claims the submitted information is protected by copyright. We have considered the submitted argument and reviewed the submitted information.

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

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<sup>1</sup>We note this office 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 to 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 received and considered the information submitted by the city pursuant to that request. Additionally, we note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See id.* § 552.301(e). Nevertheless, as section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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 assert the submitted information is made confidential by section 418.181 of the Government Code. 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 Texas Homeland Security Act. *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 Texas Homeland Security Act 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).

The city informs us the information it marked depicts "the exact locations of the city's underground utility system, including water lines and fire hydrants[.]" The city asserts, and we agree, the city's water and fire suppression systems 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"). The city states release of the information at issue "could provide criminals and potential terrorist[s] with details regarding the locations of the underground [systems] which the terrorists could use to debilitate and destroy those systems." Based on these arguments and our review, we find the city has demonstrated release of the information it marked would identify the technical details of particular vulnerabilities of the city's water and fire suppression systems to an act of terrorism. Thus, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

The city argues 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

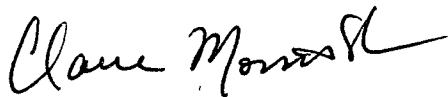
governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must release the remaining information; however, any information that is subject to copyright may be released only 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 771786

Enc. Submitted documents

c: Requestor  
(w/o enclosures)