



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78207

OR2019-22937

Dear Mr. Kopp:

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# 781619 (COSA File Nos. W267124 through W267128).

The City of San Antonio (the "city") received five requests from the same requestor for information pertaining to a specified incident. 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.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the date of the present request. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

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. 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. The city asserts the remaining information is made confidential by the HSA. Section 418.176 of the HSA provides, in relevant part,

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.177 provides,

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. 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. Section 418.182 provides, in relevant part:

Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). 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 argue the submitted information is confidential under sections 418.176, 418.177, 418.181, and 418.182 of the Government Code. You state the submitted information pertains to the city's 9-1-1 call center. You assert, and we agree, the city's 9-1-1 call center is critical infrastructure for the purposes of section 418.181 of the Government Code. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). You assert release of the submitted information would reveal the "vulnerabilities . . . specifications, operating procedures, and locations" of critical infrastructure. Upon review, we agree, with the exception of the information we marked and indicated for release, the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, with the exception of the information we marked for release, the city may must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ However, you failed to demonstrate that sections 418.176, 418.177, 418.181, or 418.182 of the Government Code apply to any portion of the remaining information. As a result, the city may not withhold any portion of the remaining information under 552.101 of the Government Code in conjunction with section 418.176, section 418.177, section 418.181 or section 418.182 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This section makes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. You state the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. Upon review, we conclude you failed to demonstrate any of the remaining information is confidential under section 772.218, and the city thus may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

In summary, with the exception of the information we marked for release, the city may must withhold the submitted information under section 552.101 of the Government Code

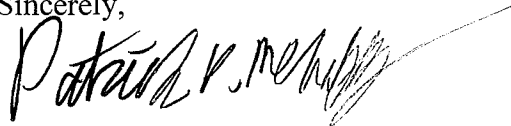
¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

in conjunction with section 418.181 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/jxd

Ref: ID# 781619

Enc. Submitted documents

c: Requestor
(w/o enclosures)