



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2019

Ms. Charla Thomas
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2019-26063

Dear Ms. Thomas:

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# 786072.

The City of Temple (the "city") received a request for documents and e-mails related to a specified city water tower, a specified city land purchase, and the supply of water to a specified location. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of portions of the submitted information may implicate the proprietary interests of Landmark Structures I, L.P. and Phoenix Fabricators and Erectors, L.L.C. Accordingly, you state, and provide documentation showing, the city notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *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 the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either third party explaining why the submitted information should not be released.

Therefore, we have no basis to conclude either third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest either third party may have in the 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 Code § 552.101. Section 552.101 encompasses information protected by section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182 provides in part:

(a) [I]nformation . . . 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 information may be related to a security system does not make such information *per se* confidential under section 418.182. *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 section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

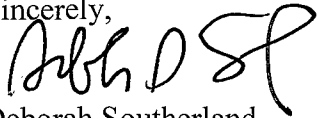
You state a portion of the submitted information relates to the location of the city’s data networks, and thus, reveals the location of security systems used to protect public property from acts of terrorism or related criminal activity. You state the release of the information at issue could provide a potential terrorist with the ability to “hinder the [c]ity’s ability to provide essential public services, create mass chaos, permit incidences of cyber terrorism, and cause substantial financial impact to the [c]ity.” Upon review, we find some of the information at issue relates to the location and specifications of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. However, we find you have not demonstrated any of the remaining information 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. Thus, we find you have not demonstrated the applicability of section 418.182 to the remaining information, and the city may not withhold any portion of the remaining information under

section 552.101 of the Government Code on that basis. 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,



Deborah Southerland
Attorney
Open Records Division

DS/mo

Ref: ID# 786072

Enc. Submitted documents

c: Requestor
(w/o enclosures)