



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Mr. Zachary Brown
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2019-27437

Dear Mr. Brown:

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# 788775.

The City of Austin (the "city") received a request for seven categories of information pertaining to retail and food vendors at the Austin Bergstrom International Airport (the "airport"). You state the city released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of 24 Hour Flowers, Inc.; DNC; Fara Café; One Start Dreams d/b/a Auntie Anne's; Paradies Lagardere; Prevost Consulting Group, LLC d/b/a James Avery ("Prevost"); Taste, Inc. d/b/a Vino Volo; Wok & Roll; and Zoom Systems. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of 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 received comments from Prevost. We have considered the submitted arguments and reviewed the submitted information, some of which is a representative sample.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note Prevost objects to disclosure of information the city did not submit to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information the city submitted for our review.² See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note some of the information at issue was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-24621 (2019). In that ruling, we determined, as no interested third party raised exceptions to release, the city must release the information at issue. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2019-24621 as a previous determination and release the information at issue in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous ruling.

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.

Gov't Code § 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 remaining information consists of detailed drawings of interior areas of the airport. You argue, and we agree, the airport is critical infrastructure for purposes of section

²As we are able to make this determination, we need not address Prevost's arguments against the disclosure of this information.

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 assert release of this information would reveal detailed information about the airport and expose the airport to potential acts 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 to an act of terrorism. Thus, the city must 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 continue to rely on Open Records Letter No. 2019-24621 as a previous determination and release the information at issue in accordance with that ruling. The city must withhold the remaining 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 <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/gw

Ref: ID# 788775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 9 Third Parties
(w/o enclosures)