



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2019

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2019-29984

Dear Ms. Burnett:

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# 793145 (UT OGC# 192171).

The University of Texas System (the "system") received a request for numerous categories of information relating to a specified project. The system states it is withholding and releasing some information to the requestor in accordance with Open Record Letter No. 2019-19931 (2019). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Additionally, the system states it will release most of the remaining requested information to the requestor. The system claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions the system claims and reviewed the submitted representative sample of information.<sup>1</sup>

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 of the Government Code also encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through

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<sup>1</sup> We assume 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 those records contain substantially different types of information than that submitted to this office.

418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides “[t]hose 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; *see also 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, and functions vital to the state or the nation”). The fact that information may generally be related to a governmental body’s security concerns or to a security system 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 confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 system states some of the submitted information, which the system marked, consists of detailed drawings and technical specifications of The University of Texas Rio Grande Valley (the “university”) Multipurpose Academic Building (the “MPAC”), which is currently under construction. The system explains “[t]he MPAC will feature lecture space and classrooms, faculty and administrative offices, physics and math computer labs, and student study meeting space” which will be frequented by the university’s “students, faculty, and staff, and members of the general public.” Thus, the system asserts, and we agree, the MPAC is critical infrastructure for purposes of section 418.181. *See generally 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 system states the information at issue reveals technical details of the mechanical and electrical features of the MPAC. The system argues the information at issue, if released, could provide criminals or terrorists with critical information on how to debilitate these systems, which would undermine the efforts of the university, the system, and other law enforcement agencies to safeguard the welfare of individuals on campus. Based on these representations and our review, we find the system has demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the system must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See id.* § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the

communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The system states some of the remaining information consists of communications involving attorneys for the system and system employees and officials that were made in furtherance of the rendition of professional legal services to the system. The system states these communications were intended to be, and have remained, confidential. Based on the system’s representations and our review, we find the system has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the system may withhold the information it marked under section 552.107(1) of the Government Code.

In summary, the system 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 system may withhold the information it marked under section 552.107(1) of the Government Code. The system 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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/gw

Ref: ID# 793145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)