



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2019

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
PO Box 9277
Corpus Christi, Texas 78469-9277

OR2019-31293

Dear Mr. Garcia:

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# 796232 (CCPD File No.: 776).

The City of Corpus Christi (the "city") received a request for all documents, including communications, regarding the Harbor Bridge Project.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of an interested third party. Accordingly, you state you notified the third party of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.² *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

¹ You state, and provide documentation demonstrating, the city sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the city received the required deposit on August 21, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² We note, the city does not inform us of the name of the third party you notified.

Act in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.³

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 any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any 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 any third party may have in the information.

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).

³ 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 that those records contain substantially different types of information than that submitted to this office.

You state the submitted information relates to the new Harbor Bridge Project. We find this bridge system 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”). You explain the submitted bridge plan “show[s] the designs and developments of the new [bridge]” and this information “can be used to find vulnerabilities in the critical infrastructure of the [c]ity.” Based on your arguments and our review, we find you have demonstrated release of the information we marked would identify the technical details of particular vulnerabilities of the bridge to an act of terrorism. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Upon review, however, we find you have failed to demonstrate that section 418.181 applies to the remaining information. As a result, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note the remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code.⁴ Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). We are unable to determine if the e-mail addresses within the remaining information fall within the scope of subsection 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses within the remaining information are not excluded by subsection 552.137(c) of the Government Code, the city must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent an e-mail address within the remaining information are excluded by subsection 552.137(c), that e-mail address may not be withheld under section 552.137 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. To the extent the e-mail addresses within the remaining information are not excluded by subsection 552.137(c) of the Government Code, the city must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the e-mail addresses belong affirmatively consent to their release. 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", followed by a long horizontal flourish.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 796232

Enc. Submitted documents

c: Requestor
(w/o enclosures)