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ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Victor M. Cristales
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullet
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2019-32224

Dear Mr. Cristales:

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# 797000 (Reference# G035986).

The City of Frisco (the "city"), which you represent, received a request for right of way, paving, water, and sewer plans for a specified area. 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.

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. This section encompasses information that is made confidential by other statutes, such as section 418.181 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). 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. 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 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).

You state the information you marked pertains to the city's sanitary sewer and water systems. You assert, and we agree, the city's sanitary sewer and water systems are 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 state the information at issue reveals "specifications and locations of critical infrastructure and systems within [the city]." You assert release of the information at issue would identify particular vulnerabilities and details of the city's water and sewer systems. Based on your representations and our review, we find you have demonstrated the release of most of the information at issue would identify the technical details or particular vulnerabilities of the city's critical infrastructure to an act of terrorism. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, upon review, we find you have failed to demonstrate the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the remaining information at issue is not confidential under section 418.181, and the city may not withhold it under section 552.101 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jxd

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Enc. Submitted documents

c: Requestor
(w/o enclosures)