



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 10, 2019

Mr. Joseph J. Gorfida, Jr.  
Counsel for the City of Midlothian  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2019-34854

Dear Mr. Gorfida:

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# 800407 (Reference No. 111261).

The City of Midlothian (the "city") received a request for specified information pertaining to two defined locations.<sup>1</sup> 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 Methodist Health System ("MHS"). Accordingly, you state, and provide documentation showing, you notified MHS 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. *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 submitted arguments and reviewed the submitted information.

We note 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) of the Government Code to

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<sup>1</sup> We asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See Gov't Code § 552.303(c)-(d)* (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the city pursuant to that request.

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 MHS explaining why the submitted information should not be released. Therefore, we have no basis to conclude MHS 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 any portion of the submitted information related to MHS on the basis of any proprietary interest it 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. This section encompasses information that is made confidential by other statutes. You raise section 552.101 in conjunction with section 418.181 of the Texas Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.181 provides:

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.

*Id.* § 418.181. The fact that information may relate to a governmental body's security measures 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 of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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).

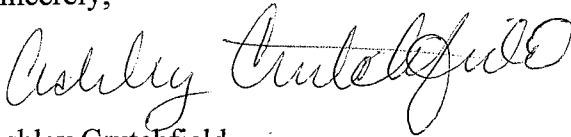
We note the submitted information consists of maps, plans, depictions, and schedules pertaining to the construction of a hospital. You argue, and we agree, the hospital is critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2) (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). You assert release of the information at issue “would expose the vulnerability of the [hospital] to possible terrorist threats.” Based upon your representations and our review, we find the information we indicated reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find you

failed to establish the remaining information is confidential under section 418.181. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. As no further arguments against disclosure are made, 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/rm

Ref: ID# 800407

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)