



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Ms. Nneka E. Kanu
Ms. Rebekah A. Wendt
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-02507

Dear Ms. Kanu and Ms. Wendt:

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# 808560 (GC No. 26256 and 26312).

The City of Houston (the "city") received two requests from different requestors for information pertaining to Lake Houston, the Lake Houston Dam, and the mooring of vehicles during specified time periods.¹ You state the city will release some of the requested information to the requestors. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Black & Veatch Corporation, Coastal Water Authority, and Lockwood, Andrews & Newman, Inc. ("LAN") of the request for information and of their right to submit arguments to this office as to why the submitted information 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 received comments from LAN.

¹ We note the city asked for and received clarification regarding one of the requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

We have considered the submitted arguments and reviewed the submitted representative sample of information.² We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure “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.

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 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).

The submitted information consists of an emergency action plan and operating plan pertaining to the Lake Houston Dam. We understand the Lake Houston Dam is part of the city's critical infrastructure for purposes of section 418.181. *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 explain the submitted information reveals the “the preparation, response, recovery, and emergency operations information” for incidents at the Lake Houston dam. You state “[a] terrorist or other criminal element could exploit the requested information in planning mass attacks[.]” You further state release of this information would “significantly impact the [c]ity's ability to deliver public safety services to the citizens in the event of an act of terrorism or related criminal activity.” Based on your representations and our review of the information at issue, we find section 418.181 is applicable to the submitted information. Thus, the city must withhold the submitted

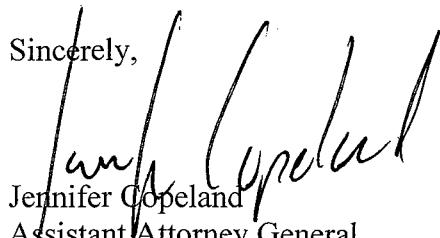
² We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code.³

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 808560

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure.