



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Mr. Todd Chenoweth  
General Counsel  
Texas Water Development Board  
P.O. Box 13231  
Austin, Texas 78711-3231

OR2020-04159

Dear Mr. Chenoweth:

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# 811632.

The Texas Water Development Board (the "board") received a request for correspondence regarding a specified wastewater system project and related correspondence with a named contractor. You state the board has released some information. 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 "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

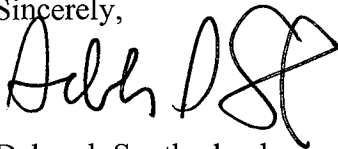
confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information consists of maps and engineering diagrams for a wastewater system. You argue, and we agree, the wastewater system 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 the security, governance, public health and safety, economy, or morale of the state or the nation"). You state release of this information would reveal or expose the wastewater system to "significant criminal or terrorist attacks because it contains information on the exact locations where contaminants could be introduced into the water system or where critical components of the system could be disabled or destroyed." Based on your representations and our review, we find you have demonstrated release of the submitted information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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,



Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/be

Ref: ID# 811632

Enc. Submitted documents

c: Requestor  
(w/o enclosures)