



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2020

Ms. Laurie Nichols
Paralegal
City of Dallas
1500 Marilla Street, Suite 5DS
Dallas, Texas 75201

OR2020-06975

Dear Ms. Nichols:

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# 815585 (C011507-121119).

The City of Dallas (the "city") received a request for structural or architectural drawings and certificates pertaining to two specified school buildings. 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 representative sample of information.¹

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

¹ 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 those records contain substantially different types of information than that submitted to this office.

(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 submitted information consists of technical details and particular vulnerabilities of structural, electrical, and utility systems of elementary and high school buildings. You indicate, and we agree, the buildings at issue constitute critical infrastructure for purposes of section 418.181. *See id.* § 421.001 (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 reveal potential vulnerabilities in key structural, mechanical, and technical details of the school buildings and could be used to "cause the most disruption or cause extreme damage by an act of terrorism." You further assert release of the information at issue could be used to harm students, employees, and citizens located near the school buildings. Based on your representations and our review, we find you have demonstrated the release of most of the submitted information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, with the exception of the information we marked for release, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find you have failed to establish the remaining information is confidential under section 418.181 of the Government Code, and the city may not withhold it under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note some of the remaining information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, with the exception of the information we marked for release, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must release the remaining information; however, the city may only release any information subject to copyright in accordance with copyright law.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/rm

Ref: ID# 815585

Enc. Submitted documents

c: Requestor
(w/o enclosures)