



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2020

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2020-10381

Dear Mr. Ramirez:

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# 820283.

The Lower Colorado River Authority (the "LCRA") received a request for all calls for service pertaining to seven key terms during a defined time period. 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.<sup>1</sup>

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. The city asserts the remaining information is made confidential by the HSA. Section 418.176 of the HSA provides, in relevant part,

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

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<sup>1</sup> 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.

detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response, provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

*Id.* § 418.176(a). Section 418.177 provides,

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. 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 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 argue the submitted information is confidential under sections 418.176, 418.177, and 418.181 of the Government Code. However, upon review, we find you failed to demonstrate that sections 418.176, 418.177, or 418.181 of the Government Code apply to any portion of the submitted information. As a result, the LCRA may not withhold any portion of the submitted information under 552.101 of the Government Code in conjunction with section 418.176, section 418.177, or section 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. We understand the LCRA to claim the remaining information is confidential under section 673 of the Critical Infrastructure Information Act (“CIIA”), title 6, sections 671 through 674 of the United States Code. 6 U.S.C. §§ 671 - 674. Section 673 pertains to the protection of certain voluntarily shared critical infrastructure information. Subsections (a)(1)(A) through (D) of section 673 apply to a “covered [f]ederal agency,” defined in the CIIA to mean the Department of Homeland Security, and provide in relevant part the following:

(a) Protection

(1) In general

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of Title 5 (commonly referred to as the Freedom of Information Act);

...

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except [in certain specified circumstances.]

6 U.S.C. § 673(a)(1)(A), (D). Thus, these provisions restrict the disclosure of critical infrastructure information voluntarily submitted to a covered federal agency for certain agency uses when the submission includes an express statement specified in section 673(a)(2).<sup>2</sup> *See id.* § 673(a)(1), (a)(2) (defining “express statement”); *see also id.* § 671 (defining “covered [f]ederal agency,” “critical infrastructure information,” and “voluntary”). Therefore, these provisions apply when a covered federal agency receives a request for the information; they do not apply when a state or local governmental body receives a request for the information. *See id.* § 673(a)(1); *see also* Attorney General Opinion MW-95 (1979) (neither Freedom of Information Act (“FOIA”) nor federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); Open

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<sup>2</sup> In this analysis of the CIIA, we will refer to critical infrastructure information voluntarily submitted to a covered federal agency for the specified agency uses and with the accompanying express statement as “information.”

Records Decision No. 124 (1976) (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under the Act when held by Texas governmental body).

In contrast, subsection (E) of section 673(a)(1) applies when a state or local government agency receives a request for the information. *See* 6 U.S.C. § 673(a)(1)(E). Under subsection (E), the information

shall not, if provided to a State or local government or government agency—

- (i) be made available pursuant to any State or local law requiring disclosure of information or records;
- (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or
- (iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act[.]

*Id.* § 673(a)(1)(E) (emphasis added). Thus, while subsection (E) applies to information maintained by any state or local government or government agency, the prohibitions on release apply only if a covered federal agency “provided [[the information] to [the] local or state government or agency.” *See id.*

Although the LCRA claims the submitted information is confidential under section 673 of the United States Code, we find the LCRA does not represent the reports at issue were provided to the authority by a covered federal agency as contemplated by subsection (E). *See id.* § 673(a)(1)(3). Consequently, as a covered federal agency did not provide the documents at issue to the authority, we find that the LCRA has failed to demonstrate the applicability of the CIIA in this instance. Therefore, because you have failed to establish that the CIIA is applicable here, we need not determine whether the information at issue is “critical infrastructure information” for purposes of section 673 or whether the information is “substantially similar” to the express statement in section 673(a)(2). *See id.* §§ 671(3)(A), 673(a)(2)(A). Thus, we conclude that the submitted information is not confidential under section 673(a)(2), and may not be withheld under section 552.101 of the Government Code on that basis. The LCRA must release the submitted 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

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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/eb

Ref: ID# 820283

Enc. Submitted documents

c: Requestor  
(w/o enclosures)