



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2020

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2020-11279

Dear Mr. Crawford:

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# 822875 (GC Nos. 26460 and 26549).

The City of Houston (the "city") received two requests for certain information pertaining to hazardous materials facilities within the city. Additionally, the first requestor also seeks information pertaining to inspections and incidents occurring at a specified facility. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, you have notified the United States Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives (the "bureau") of its right to submit comments to this office explaining why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the first request is broader than the second request because, in addition to certain information pertaining to hazardous materials facilities, it also seeks information pertaining to inspections and incidents occurring at a specified facility. Thus, the city need not release information to the second requestor that is not responsive to his request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101.

¹ As of the date of this letter, this office has not received comments from the bureau explaining why any portion of the submitted information should not be released.

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 418.178 provides as follows:

(a) In this section, "explosive weapon" has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert the submitted information is confidential pursuant to section 418.178(b) of the Government Code. You state the information at issue "provide[s] detailed information regarding the locations of H-occupancy businesses and Tier 2 facilities within the [c]ity[.]" You also state that the submitted documents contain information revealing "the specific location, quantity, and identity of chemicals[.]" and assert release of the information at issue "is more than likely to assist in the construction or assembly of an explosive weapon." Based on your representations and our review, we conclude some of the information at issue, which we marked, is subject to section 418.178. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. However, the remaining information does not indicate the specific locations of chemicals that are more than likely to assist in the construction or assembly of an explosive weapon. Thus, we find you have failed to demonstrate the remaining information is confidential under section 418.178 of the Government Code, and the city may not withhold any portion of it under section 552.101 of the Government Code on that basis. 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 822875

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)