



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2020

Mr. Stephen D. Gates
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2020-12550

Dear Mr. Gates:

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# 826388 (ORR# M029335-021220).

The City of Midland (the "city") received two requests from the same requestor for building plans for specified properties. You state you have 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 from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes. The city raises section 552.101 in conjunction with section 418.181 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. 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 be related to a governmental body's security concerns does not make such 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 identifies details pertaining to the city's water system facilities, sanitary sewer systems, and drainage system facilities. You assert, and we agree, the city's sanitary sewer, water, and drainage systems are critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001 (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 indicate release of the information at issue could provide a potential terrorist or other criminal actor with details regarding the city's water systems, which could be used to damage the city's critical infrastructure. Based on your representations and our review, we find you have demonstrated the release of portions of the information at issue, which we marked, would identify the technical details or particular vulnerabilities of the city's critical infrastructure to an act of terrorism. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, upon review, we find you have failed to demonstrate the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the remaining information at issue is not confidential under section 418.181, and the city may not withhold it under section 552.101 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,

Timothy Neal
Assistant Attorney General
Open Records Division

TN/be

Mr. Stephen D. Gates - Page 3

Ref: ID# 826388

Enc. Submitted documents

c: Requestor
(w/o enclosures)