



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2020

Ms. Taylor Floyd
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2020-12563

Dear Ms. Floyd:

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# 822811 (PIR# C000754).

The City of Dallas (the "city") received a request for e-mails, text messages, and communications between certain city departments and a named individual during a certain time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. You also state you notified Aecom and LiveNation of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2016-27502 (2016), 2016-28016 (2016), 2017-00067 (2017), 2017-00700 (2017), 2017-06492 (2017), 2017-22169 (2017), 2018-01329 (2018), and 2018-13431 (2018). In those rulings, we determined (1) the city may withhold certain information under section 552.107(1) of the Government Code, (2) the city may withhold certain information under section 552.111 of the Government Code, (3) the city may withhold certain information under section 552.104 of the Government Code, and (4) the city must release certain information. You state the

¹ The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

law, facts, or circumstances on which the prior rulings were based have not changed. Thus, the city must continue to rely on Open Records Letter Nos. 2016-27502, 2016-28016, 2017-00067, 2017-00700, 2017-06492, 2017-22169, and 2018-01329 as previous determinations and withhold or release the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, with respect to Open Records Letter No. 2018-13431, we note the 86th Legislature recently amended section 552.104 of the Government Code. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 1. Therefore, we find the law on which Open Records Letter No. 2018-13431 was based has changed. *See* ORD 673. Thus, the city may not rely on Open Records Letter No. 2018-13431 as a previous determination and withhold any of the remaining information at issue in accordance with that ruling. Further, we understand you have not submitted information responsive to the portion of the request for which you believed Open Records Letter No. 2018-13431 to be dispositive. Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we assume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from either of the third parties. Thus, we have no basis to conclude either of the third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest either third party may have in the information.

Section 552.116 of the Government Code provides the following:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The city asserts Exhibit B consists of audit working papers pertaining to an audit conducted by the City Auditor's Office in accordance with the 2016 Annual Audit Plan. The city states, and provides documentation demonstrating, the audit is authorized by the City Council and Chapter IX, Section 3 of the Dallas City Charter. *See id.* § 552.116(b)(1). Based on these representations and our review, we agree Exhibit B constitutes audit working papers. Therefore, the city may withhold Exhibit B under section 552.116 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information that is made confidential by other statutes, such as the HSA. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, 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 of the Government Code provides the following:

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 418.178 provides:

(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. Section 418.181 states:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of critical infrastructure to an act of terrorism.

Id. § 418.181. Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that

relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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).

We note Exhibit C relates to a city security camera system. We understand the purpose of the security camera system at issue is to protect public property, members of the public, and city employees from acts of terrorism, vandalism, theft, or related criminal activity. Release of the information at issue would reveal the location of the security cameras and other characteristics of the security system. Further, we understand release of this information would compromise security exposing vulnerabilities in the city's security. Based on the submitted information and our review, we conclude the information we marked in Exhibit C is related to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to specifications of security system that recorded them, and thus, are confidential under section 418.182). Accordingly, the city must withhold the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. In addition, we note Exhibit D relates to an entertainment venue. Upon review, we find the venue constitutes critical infrastructure. *See generally* Gov't Code § 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"). We note portions of Exhibit D reveal technical specifications of the venue. Thus, we find the release of the information we have marked would identify the technical details of particular vulnerabilities of the venue to an act of terrorism. Therefore, the city must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, upon review, we find the city has failed to demonstrate the remaining information at issue in Exhibit C or Exhibit D consists of information that is confidential under section 418.176, section 418.177, section 418.178, section 418.181, or section 418.182 of the Government Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176, section 418.177, section 418.178, section 418.181, or section 418.182 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). To the extent subsection (c) does not apply, the city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the city must continue to rely on Open Records Letter Nos. 2016-27502, 2016-28016, 2017-00067, 2017-00700, 2017-06492, 2017-22169, and 2018-01329, as previous determinations and withhold or release the information at issue in accordance with those rulings. The city may withhold Exhibit B under section 552.116 of the Government Code. The city must withhold the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The city must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. To the extent subsection (c) does not apply, the city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)