



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2020

Ms. Megan R. Santee
Counsel for the City of Rollingwood
Denton Navarro Rocha Bernal & Zech, P.C.
2500 West William Cannon Drive, Suite 609
Austin, Texas 78745-5320

OR2020-17331

Dear Ms. Santee:

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# 833951 (Reference Nos. RW-0010 and RW-0011).

The City of Rollingwood (the "city"), which you represent, received two requests from different requestors for certain information pertaining to a specified address. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ Additionally, the city states release of the submitted information may implicate the proprietary interests of Sanders Architecture, PLLC ("Sanders"). Accordingly, the city states, and provides documentation showing, it notified Sanders of the request for information and of its right to submit arguments to this office. *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

¹ We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the city pursuant to that request.

have received comments from Sanders. We have considered the submitted arguments 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. Section 552.101 encompasses information protected by chapter 418 of the Government Code. 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 418.181 of the Government Code provides the following:

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).

The city informs us the information at issue identifies specific locations and technical details of underground utilities, including water and wastewater systems. The city asserts, and we agree, the city’s water and wastewater systems are critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2) (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). The city states release of this information would reveal the locations and vulnerabilities of the city’s water and wastewater systems and expose them to possible acts of terrorism or other criminal activity. Based upon these representations and our review, we find the city has demonstrated release of some of the information at issue, which we marked, would identify the technical details of particular vulnerabilities of the city 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.² However, we find the city has failed to establish any portion of the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (stating that

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, we find the city has not demonstrated the applicability of section 418.181 to the remaining information, and the city may not withhold it under section 552.101 of the Government Code on this basis.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although the city argues the remaining information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110.

Sanders raises section 552.101 of the Government Code for the remaining information. As noted above, section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. However, Sanders has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the remaining information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code.

Sanders also argues the materials at issue are 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, 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. The city must release the remaining information; however, any information that is subject to copyright may be released only 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 833951

Enc. Submitted documents

c: Requestors
(w/o enclosures)

cc: Third Party
(w/o enclosures)