



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Ms. Kasey Feldman-Thomason  
General Counsel  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2020-18017

Dear Ms. Feldman-Thomason:

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# 835574 (Ref. No. 2020-02-012).

The Public Utility Commission of Texas (the "commission") received a request for specified types of reports during a stated period of time.<sup>1</sup> You state the commission does not have information responsive to portions of the present request.<sup>2</sup> You also state the commission has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of forty third parties.<sup>3</sup> Accordingly, you state, and provide documentation

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<sup>1</sup> You state, and provide documentation demonstrating, the commission sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup> The third parties at issue are as follows: AEP OklaUnion; Bandera Electric Cooperative, Inc. ("Bandera EC"); Bartlett Electric Cooperative, Inc. ("Bartlett EC"); Big Country Electric Cooperative, Inc. ("BCEC"); Bluebonnet Electric Cooperative, Inc. ("Bluebonnet EC"); Brazos Electric Power Cooperative, Inc. ("BEPC"); CenterPoint Energy Houston Electric, LLC ("CenterPoint"); Coleman County Electric  
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demonstrating, the commission notified these interested third parties 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 received comments from the following third parties: Bandera EC, Bartlett EC, BCEC, Bluebonnet EC, CenterPoint, CCEC, CVEC, DETEC, DSEC, GVEC, HCEC, KEC, LCRA TSC, Lone Star, MVEC, MidSouth, PHEC, SHEC, SBEC, SMEC, SWTEC, TVEC, United, URECC, VEC, WETT, and WCEC.<sup>4</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Bandera EC, Bartlett EC, BCEC, Bluebonnet EC, CCEC, CVEC, DETEC, GSEC, GVEC, KEC, MVEC, PHEC, SHEC, SBEC, SMEC, SWTEC, TVEC, United, URECC, VEC, and WCEC assert their respective information at issue is not responsive to the present request for information. However, we note the Act requires a governmental body to make a good-faith effort to relate a request for information to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the commission has submitted the information at issue for our review, we find the commission has made a good-faith effort to relate the present request to information within its possession or control and submit information to this office that is responsive to the request. Accordingly, we will address the arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 418.181 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.181 provides “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular

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Cooperative, Inc. (“CCEC”); Concho Valley Electric Cooperative, Inc. (“CVEC”); Deep East Texas Electric Cooperative, Inc. (“DETEC”); Golden Spread Electric Cooperative, Inc. (“GSEC”); Guadalupe Valley Electric Cooperative, Inc. (“GVEC”); Hamilton County Electric Cooperative Association (“HCECA”); Houston County Electric Cooperative (“HCEC”); Karnes Electric Cooperative, Inc. (“KEC”); Lamar Electric Cooperative, Inc.; Lone Star Transmission, LLC (“Lone Star”); Lower Colorado River Authority Transmission Services Corporation (“LCRA TSC”); Magic Valley Electric Cooperative, Inc. (“MVEC”); Mid-South Electric Cooperative Association (“MidSouth”); Navarro County Electric Cooperative, Inc. (“NCEC”); Navasota Valley Electric Cooperative, Inc. (“NVEC”); Nextera Energy Marketing, LLC; Nextera Retail of Texas, LP; Nueces Electric Cooperative, Inc.; Panola Harrison Electric Cooperative, Inc. (“PHEC”); Pedernales Electric Cooperative, Inc.; Sam Houston Electric Cooperative, Inc. (“SHEC”); San Bernard Electric Cooperative, Inc. (“SBEC”); San Miguel Electric Cooperative, Inc. (“SMEC”); Sharyland Utilities, LLC; Southwest Rural Electric Association, Inc.; Southwest Texas Electric Cooperative, Inc. (“SWTEC”); Texas New-Mexico Power Company; Trinity Valley Electric Cooperative, Inc. (“TVEC”); United Electric Coop (“United”); Upshur-Rural Electric Cooperative, Inc. (“URECC”); Victoria Electric Cooperative, Inc. (“VEC”); Wind Energy Transmission Texas, LLC (“WETT”); and Wood County Electric Cooperative, Inc. (“WCEC”).

<sup>4</sup> We have also received comments from BEPC, HCECA, NCEC, and NVEC stating they do not object to the release of their information at issue.

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 confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 explain the information at issue contains electric utilities’ plans for responding to events that threaten the functionality of electrical systems. We note the information at issue consists of electric utilities’ emergency operations plans. You state, and we agree, the electrical systems at issue constitute critical infrastructure for purposes of section 418.181. *See id.* § 421.001 (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). Further, you state the information at issue “reveals vulnerabilities of the critical infrastructure” and assert “release of this information could be useful to terrorists in attacking energy infrastructure and may present a risk to the safe and secure provision of electricity.” Based on your representations and our review, we find you have demonstrated the release of the submitted information would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>5</sup>

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/rm

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<sup>5</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 835574

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 40 Third Parties  
(w/o enclosures)