



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Ms. Cynthia Tynan
Assistant General Counsel and Public Information Coordinator
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2903

OR2020-18056

Dear Ms. Tynan:

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# 836502 (OGC# 197186).

The University of Texas at Austin (the "university") received a request for a specified contract. You claim some of 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. Additionally, you state release of the submitted information may implicate the proprietary interests of Crown Castle Fiber, LLC ("Crown Castle"). Accordingly, you state, and provide documentation showing, you notified Crown Castle of the request for information and of its 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).

Initially, we note some of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-16780 (2020). In that ruling, we determined the university must: (1) withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; (2) withhold the information we indicated under section 552.110(c) of the Government Code; and (3) release the remaining information. We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the university must continue to rely on Open Records Letter No. 2020-

16780 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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, we will consider your argument for the remaining information not subject to the previous ruling.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Crown Castle explaining why the remaining information should not be released. Therefore, we have no basis to conclude Crown Castle has a protected proprietary interest in the remaining information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold the remaining information on the basis of any proprietary interest Crown Castle may have in the information.

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. Section 552.101 of the Government Code encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. 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 vulnerabilities of critical infrastructure to an act of terrorism." *Id.* § 418.181; *see also 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, and functions vital to the state or the nation"). The fact information may generally be related 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 consists of details pertaining to the university's wireless telecommunications system. You assert, and we agree, the university's wireless telecommunications system is critical infrastructure. You state the information at issue "reveals the locations and specification[s] of the facilities that house the [u]niversity's wireless telecommunications base stations[.]" You also state "disclosing the marked information would put the [u]niversity's wireless telecommunication system at risk" and the information at issue could be used by "terrorists and hackers who could use it to

interrupt or impede all wireless communications throughout the [u]niversity's campus, thereby disrupting the ability of individuals to communicate with law enforcement and emergency services to respond to a terroristic incident." Based on your representations and our review, we find you have demonstrated the release of the information at issue would identify the technical details of particular vulnerabilities of the university's wireless telecommunications system to an act of terrorism. Thus, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2020-16780 as a previous determination and withhold or release the information at issue in accordance with that ruling. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The university 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/gw

Ref: ID# 836502

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)