



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Mr. Michael Muscarello  
Interim City Secretary  
City of Webster  
101 Pennsylvania Avenue  
Webster, Texas 77598

OR2020-18907

Dear Mr. Muscarello:

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# 837684 (PIR# CH-110-2020).

The City of Webster (the "city") received a request for any and all drawings, permits, and inspections pertaining to a specified address. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> Additionally, you state the city notified interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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) of the Government Code 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 any interested third party explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the interested third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold the submitted information on the basis of any proprietary interest any interested third party may have in the 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." *Id.* § 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).

You explain the information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. We note the information at issue depicts the locations of the city's water system. We agree the city's water system is 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). 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. 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 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. As no further arguments against disclosure are made, 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jm

Ref: ID# 837684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)