



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2020

Mr. Mitchell G. Page
Counsel for the San Jacinto River Authority
Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

OR2020-21366

Dear Mr. Page:

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# 840609.

The San Jacinto River Authority (the "authority"), which you represent, received a request for four categories of information pertaining to Lake Conroe, including water control and gate operation plans, a certain log of flood events, a specified letter, and a particular contract. The authority claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the authority has only submitted information responsive to the first category of the request. Although you state the authority has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the district attorney's office to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent information responsive to the remaining portions of the request existed and was maintained by the authority on the date it received the request, we assume the authority has released it to the requestor. If the authority has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 section 418.181 of the Government

Code, which 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.” The fact that information may generally be related to a governmental body’s security concerns or to a security system does not make the information *per se* confidential under section 418.181. *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 section 418.181 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The authority states the submitted information contains details about the protocols related to the operation of the Lake Conroe dam and reservoir. The authority also explains the dam and reservoir provide a source of water supply for customers of the authority and the City of Houston. The authority argues, and we agree, the dam and reservoir are critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2) (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”). The authority states public release of the submitted information “would reveal particular vulnerabilities of the Lake Conroe dam that make it susceptible to an act of terrorism” and put the health and safety of public citizens at risk. Upon review, we find the authority has demonstrated the release of the submitted information would identify the technical details of particular vulnerabilities of the dam to an act of terrorism. Thus, the authority must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

¹ As our ruling is dispositive, we do not address your remaining argument to withhold this information.

Mr. Mitchell G. Page - Page 3

Ref: ID# 840609

Enc. Submitted documents

c: Requestor