



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2020

Ms. Mary Kay Fischer
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546-4856

OR2020-21476

Dear Ms. Fischer:

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# 842207 (Ref. No. W012529-061520).

The City of Friendswood (the "city") received a request for building plans pertaining to a specified address. You state the city released some information. You claim the submitted information is subject to copyright law. You also claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your 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).

You state the submitted information “depicts the exact locations of sanitary force mains, water lines, stormwater manholes, fire hydrants, underground gas lines and underground telephone cable lines[.]” You assert, and we agree, this infrastructure 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). You also state release of this information “would compromise safety and security measures of the underground infrastructure at issue and it would identify the technical details of particular vulnerabilities of the public utility systems to an act of terrorism.” Based upon your representations and our review, we find the city has demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Accordingly, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

You assert and we agree some of the materials at issue may be 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 it 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/jxd

Ref: ID# 842207

Enc. Submitted documents

c: Requestor
(w/o enclosures)