



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 14, 2020

Ms. Marie N. Johnson  
Counsel for the City of Murphy  
Messer, Fort & McDonald, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

OR2020-23118

Dear Ms. Johnson:

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# 844214 (ORR# W004410).

The City of Murphy (the "city"), which you represent, received a request for specified construction plans. You state the city will release or withhold some of the requested information pursuant to Open Records Letter No. 2018-22341 (2018).<sup>1</sup> 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.

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. Section 552.101 encompasses information protected by other statutes. 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

---

<sup>1</sup> In Open Records Letter No. 2018-22341, this office determined the city (1) may withhold the information not subject to section 552.022 of the Government Code under section 552.103 of the Government Code, (2) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code, and (3) must release the remaining information. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

certain information related to terrorism. Section 418.181 of the Government Code provides as follows:

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 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 state the information you marked identifies the details of the city's water and wastewater systems. You assert, and we agree, the city's water and wastewater systems are critical infrastructure for purposes of section 418.181. *See generally 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, economy, or morale of the state or the nation"). You argue release of this information would expose the water and wastewater systems to possible acts of terrorism by allowing the potential to contaminate the city's systems through wastewater conveyance and water distribution. You explain, "it is a matter of public health and safety to ensure [the city's] treatment plants, pumping stations, and conveyance and distribution . . . remain in continuous operation without contamination." Based upon your representations and our review, we find you have demonstrated the release of the information you marked would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Thus, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>2</sup> 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

---

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue.

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jm

Ref: ID# 844214

Enc. Submitted documents

c: Requestor  
(w/o enclosures)