



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-25892

Dear Ms. Lary:

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# 848655.

Fort Bend County (the "county") received a request for approval documents submitted to the county for the last three approved solar projects. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the county states release of the submitted information may implicate the proprietary interests of Bronson Solar, LLC ("Bronson") and DIODE Ventures ("DIODE"). Accordingly, the county states, and provides documentation showing, it notified the third parties of the request for information and of the 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). We have received comments from Cypress Creek Renewables, LLC on behalf of Bronson. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 DIODE explaining why the submitted information should not be released. Therefore, we have no basis to conclude DIODE has 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). Accordingly, the county may not withhold any portion of the submitted information on the basis of any proprietary interest DIODE 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).

We understand you to raise section 418.181 based on your arguments. You state the submitted information “show[s] information on the creation of electrical power and connections to the Texas power grid (ERCOT)” and release of this information could make the information vulnerable to acts of terrorism or related criminal activity. Based on your representations and our review, we find you have demonstrated most of the information at issue would identify the technical details of particular vulnerabilities of the county’s solar farms to an act of terrorism. Accordingly, with the exception of the information we marked for release, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ However, we find you have failed to establish any of the remaining information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The county 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.

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/rm

Ref: ID# 848655

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)