



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2020

Mr. Zachary A. Petrov
Johnson Petrov LLP
Counsel for New Caney Municipal Utility District
2929 Allen Parkway Suite 3150
Houston TX 77019

OR2020-27839

Dear Mr. Petrov:

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# 849784.

The New Caney Municipal Utility District (the "district"), which you represent, received a request for information related to a specified solicitation. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Phoenix Fabricators ("Phoenix"). Accordingly, the district states, and provides documentation showing, it notified Phoenix 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 reviewed the submitted information.

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 Phoenix explaining why the submitted information should not be released. Therefore, we have no basis to conclude Phoenix 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 district may not

withhold the submitted information on the basis of any proprietary interest Phoenix may have in the 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.” *Id.* § 552.101. This section encompasses information protected by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). The district claims some of the submitted information is excepted from disclosure under section 418.181 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 that information may relate to a governmental body’s security concerns or emergency management activities 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).

The district states some of the information at issue consists of construction plans for an elevated water storage tank. Upon review, we agree the district’s water storage system is part of the district’s critical infrastructure. *See id.* § 421.001(2). The district argues public disclosure of the information would reveal vulnerabilities of the district’s water supply system. Thus, the district claims the information could be used to identify the technical details of particular vulnerabilities of the district’s water system to an act of terrorism. Based on these representations and our review, we agree the requested information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the district must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. As no further exceptions to disclosure have been raised, the district 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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/be

Ref: ID# 849784

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party