



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2020

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2020-28961

Dear Ms. Smith:

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# 855043 (COSL ORR# W01059).

The City of Sugar Land (the "city") received a request for certain testing records pertaining to a specified location. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims 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. This section 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. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

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 the 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 city states the submitted information consists of testing and maintenance reports for backflow prevention devices used to prevent contamination of the city's potable water system which would endanger the health of its citizens. The city contends, and we agree, the city's water system constitutes critical infrastructure for the 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"). The city explains release of the submitted information "could provide a potential terrorist with information that could allow someone to sabotage the [c]ity's potable water system." Based on these representations and our review, we find the city has demonstrated release of the submitted information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 855043

Enc. Submitted documents

c: Requestor
(w/o enclosures)