



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77479-0110

OR2022-02864

Dear Ms. Dang:

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# 931674 (Ref. No. W012861).

The City of Sugar Land (the "city") received a request for information pertaining to a specified intersection's signal lights during a specified timeframe. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code and privileged under section 407 of title 23 of the United States Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1). You state the city received the request for information on October 13,

¹ We note, although you raise section 409 of title 23 of the United States Code, this provision was renumbered to section 407 of title 23 of the United States Code. See Pub.L. 117-58, Div. B, Title IV, § 24101(d)(1)(A), Nov. 15, 2021, 135 Stat. 784.

2021. Because you do not inform this office the city was closed for business any of the days at issue, we find the city's fifteen-business-day deadline was November 3, 2021. However, the envelope in which the city provided the information required by section 552.301(e) was postmarked January 5, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the city failed to comply with the requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You claim sections 552.101 and 552.111 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 information that is made confidential by other statutes. You raise section 552.101 in conjunction with section 418.181 of the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. 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. The fact that information may relate to a governmental body's security measures 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 of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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 assert the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. We agree the city's traffic signal information is 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 assert “release of the [c]ity's traffic signal information including the make, model and year would be useful to criminal actors and terrorists to carry out a terroristic act or plan an event for maximum disruption of traffic by gaining control of the [c]ity's computer network or system that [is] linked to the traffic

lights.” Based on your representations and our review of the information at issue, we find most of the submitted information is confidential under section 418.181 of the Government Code. Therefore, except for the information we marked for release, the city must withhold the submitted information under section 552.101 of the Government Code on that basis. However, we find you have failed to demonstrate the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Consequently, the city 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 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 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/jxd

Ref: ID# 931674

Enc. Submitted documents

c: Requestor
(w/o enclosures)