



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2022

Ms. Rebekah Wendt  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2022-03728

Dear Ms. Wendt:

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# 927059 (Reference No. W042380).

The City of Houston (the "city") received a request for information pertaining to: (1) loss in water pressure and a Boil Water Notice during a specified time period; (2) physical loss or damage incurred by Houston Water as a result of Winter Storm Uri; (3) disruption in surface water treatment during a specified time period; and (4) water system leaks during a specified time period. The city states some of the requested information will be released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. The city also states release of some of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified BGE, Inc. ("BGE") of the request for information and of their 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 considered the exception you claim and reviewed the submitted information.

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 BGE explaining why its information should not be released. Therefore, we have no

basis to conclude BGE 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 city may not withhold any of the information at issue on the basis of any proprietary interest BGE may have in it.

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 made confidential by other statutes, such as sections 418.176, 418.177, and 418.181 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”).<sup>1</sup> Section 418.177 of the Government Code provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. Section 418.181 of the Government Code 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 generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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 statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information submitted as Exhibit 2 “includes information regarding the [c]ity’s emergency management plan in response to the winter storm [that] is used to effectuate the [c]ity’s emergency response to it.” You assert “release of this information could alert a criminal or terrorist to potential vulnerabilities in the [c]ity’s emergency response plan and could allow a criminal or terrorist to exacerbate issues that come about

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<sup>1</sup> Although you do not cite to section 418.176 of the Government Code in your brief, we understand you to raise section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code based on the substance of your arguments.

in future disasters and emergencies.” You state the information submitted as Exhibit 3 “consists of infrastructure and aerial maps of the [c]ity’s water plans.” Upon review, we agree the city’s water system is part of the city’s critical infrastructure. *See id.* § 421.001(2). You assert this information “identifies, in detail, the physical location of the [c]ity’s water plants . . . and reveals the layout and key details and locations of” the city’s water system. The city argues public disclosure of the information at issue would reveal vulnerabilities of the city’s water supply system. Thus, the city claims the information could be used to identify the technical details of particular vulnerabilities of the city’s water and sewer systems to an act of terrorism. Based on your representations and our review, we find you have demonstrated some of the information at issue relates to tactical plans of an emergency response provider maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity or identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the city must withhold Exhibit 2 and the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 418.176 and section 418.181 of the Government Code.<sup>2</sup> However, upon review, we find you have failed to demonstrate the remaining information at issue consists of information that is confidential under section 418.177 or section 418.181 of the Government Code; thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on those bases.

We note some of the submitted information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the city must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

In summary, the city must withhold Exhibit 2 and the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 418.176 and section 418.181 of the Government Code. The city must withhold the submitted insurance policy numbers under section 552.136 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.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 927059

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)