



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2022

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2022-04717

Dear Ms. Villarreal:

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# 930519 (Ref. No. 2021-0196-DA.CO).

Hidalgo County (the "county") received a request for the submitted proposals and evaluative documents pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of Kologik, LLC; Motorola Solutions, Inc. ("MSI"); and PTS Solutions, Inc. Accordingly, you state, and provide documentation demonstrating, the county notified these interested third parties 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 received comments from MSI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the county'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. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Although you state the county received the present request for information on November 12, 2021, we note, and the submitted documentation demonstrates, the county received the present request on November 10,

2021. *See id.* § 552.234 (specifying permissible methods requestor may use to submit public information request). We understand the county was closed on November 11, 2021, in observance of Veterans Day. You state the county was closed on November 25, 2021, and November 26, 2021, in observance of the Thanksgiving holiday. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the county was required to provide the information required by subsection 552.301(b) by November 29, 2021. However, the envelope in which the county provided the information required by section 552.301(b) was postmarked November 30, 2021. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the county failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Upon review, we find you have failed to establish a compelling reason to address the county's argument under section 552.108 of the Government Code. However, because sections 552.101 and 552.136 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will address whether the information at issue may be excepted from disclosure on these bases.¹

Next, 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 either of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude these third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the county may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties 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 that is made confidential by other statutes, such as sections 418.176 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"). Section 418.176 provides, in relevant part:

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

(a) Information is confidential if the information is collected, assembled, or 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 and

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(1), (2). 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 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).

MSI and the county claim the information at issue is made confidential under the HSA. You explain the information at issue pertains to a request for proposals regarding software and hardware for “public safety application[s] of an integrated telecommunication system between . . . [c]ounty law enforcement agencies.” You assert, and we agree, the county’s public safety telecommunication system constitutes criminal infrastructure for the purposes of section 418.181 of the Government Code. *See generally id.* § 421.001. You assert release of the information at issue “would reveal technical and/or operational details of the public safety applications considered and the one ultimately selected by the [c]ounty.” You also assert release of the information at issue would “allow . . . individual[s] to anticipate and exploit weaknesses in the communications between the various . . . [c]ounty law enforcement agencies and endanger the safety of officers and . . . [c]ounty residents alike.” Additionally, MSI asserts release of some of its information at issue “would reveal particular vulnerabilities of [the c]ounty’s critical infrastructure.” Based on the representations of the county and MSI, as well as our review, we conclude some of the information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.² However, we find you have failed to demonstrate any of the remaining information at issue either relates to an assessment of the risk or

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

vulnerability of persons or property to an act of terrorism or related criminal activity, or identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, we conclude the county may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with either section 418.177 or 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we note the remaining information contains dates of birth. However, in this instance, we are unable to determine whether the dates of birth at issue pertain to real, living individuals or fictitious individuals created as a sample for purposes of the vendor's proposal. Thus, we must rule conditionally. Accordingly, to the extent they pertain to real, living individuals, the county must withhold the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the dates of birth do not pertain to real, living individuals, the county may not withhold such dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a government body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. To the extent they pertain to real, living individuals, the county must withhold the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold all insurance policy numbers within the remaining information under section 552.136 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.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 930519

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)