



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Mr. Austin R. Beck  
Counsel for the East Medina County Special Utility District  
Davidson Troilo Ream & Garza PC  
601 NW Loop 410, Suite 100  
San Antonio, Texas 78216

OR2022-07353

Dear Mr. Beck:

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# 933065.

The East Medina County Special Utility District (the "district"), which you represent, received a request for information regarding a specified contract. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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, and we agree, the district’s water system is critical infrastructure. *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 state, if released, the submitted information could be used to assist in “sabotage and/or terrorism or other criminal acts which might be undertaken to intentionally disrupt or otherwise endanger the integrity of the [d]istrict’s facilities and pipeline.” Based on your representations and our review, we find you have demonstrated some of the submitted information identifies the technical details of particular vulnerabilities of the district’s water system to an act of terrorism. Thus, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find you failed to demonstrate the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism for purposes of section 418.181, and the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis. The district must release the remaining information.

You also ask this office to issue a previous determination permitting the district to withhold engineering or technical drawings and plans or specifications related to critical infrastructure pursuant to section 418.181 of the Government Code in conjunction with section 552.101 of the Government Code without seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/mo

Ref: ID# 933065

Enc. Submitted documents

c: Requestor  
(w/o enclosures)