



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2022

Mr. Eric C. Farrar
Counsel for the City of Stafford
Olson & Olson LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2022-11208

Dear Mr. Farrar:

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# 942801 [COS-ORR-13-2022].

The City of Stafford (the "city"), which you represent, received a request for underground utility facility maps, improvements, and as-builts for several specified streets. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of unspecified third parties. Accordingly, you state you notified the 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 considered the exception you claim 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 information protected by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). The city claims the submitted

¹We note the city did not comply with the requirements of section 552.301 of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301. Nonetheless, because section 552.101 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

information is confidential pursuant to section 418.181 of the Government Code. 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; *see also 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, and functions vital to the state or the nation”). The fact that information may relate to a governmental body’s security concerns or emergency management activities 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 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).

You state the submitted information identifies locations and designs of the city’s water, sanitary, and drainage systems. You assert, and we agree the city’s water, sanitary, and drainage systems are critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2). You argue release of this information would “provide a potential terrorist with details regarding the locations of these items of critical infrastructure, which could compromise the safety and security of those systems.. Based on these representations and our review, we agree the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/mo

Ref: ID# 942801

Enc. Submitted documents

c: Requestor
(w/o enclosures)