



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 6, 2022

Ms. Patricia M. Borschow  
Assistant General Counsel  
El Paso Water Utilities – Public Service Board  
P.O. Box 511  
El Paso, Texas 79961-0511

OR2022-16179

Dear Ms. Borschow:

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# 951653 (Ref. No. W104438-030722).

The El Paso Water Utilities – Public Service Board (the “board”) received a request for certain surveys and utility records pertaining to a specified location. We understand the board has released some information to the requestor. 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 information.

Initially, you inform this office you sought clarification from the requestor for portions of the information requested. *See* Gov’t Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state, while the board received clarification from the requestor of a portion of the request, the requestor has not responded to the board’s request for clarification of another portion of the request. Thus, for the portion of the request for which the board sought but not received clarification, we find the board is not required to release information in response to this portion of the request. However, if the requestor clarifies this portion of the request for information, the board must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov’t Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to

relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides the following:

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; *see also id.* § 421.001(2) (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). 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 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 technical details of the board’s water and wastewater systems. You assert, and we agree, the board’s water and wastewater systems are critical infrastructure. *See generally id.* § 421.001. You also assert release of the information at issue would reveal vulnerabilities in the board’s water and wastewater systems. Based upon these representations and our review, we find the submitted information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>1</sup>

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->

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

[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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/be

Ref: ID# 951653

Enc. Submitted documents

c: Requestor  
(w/o enclosures)