



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 15, 2022

Ms. Alicia K. Kreh  
Counsel for the City of Kennedale  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2022-17238

Dear Ms. Kreh:

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# 953846.

The City of Kennedale (the "city"), which you represent, received a request for specified information pertaining to a specified property. 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 state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2021-27991 (2021). In that ruling, we determined 1) with the exception of the information we marked for release, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; and 2) the city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the city must continue to rely on Open Records Letter No. 2021-27991 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.181 provides as follows:

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. Section 418.182 provides, in relevant part,

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). 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 information at issue relates to the city’s water, storm, and drainage systems. You argue, and we agree, the city’s water, storm, and drainage systems are critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2) (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 release of this information would reveal details of the city’s water, storm, and drainage pipelines and expose them to possible acts of terrorism or other criminal activity. Based on your representations and our review, we find the city has demonstrated release of some of the information at issue would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Thus, the city 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.<sup>1</sup> However, upon review, we find you have failed to demonstrate the remaining information consists of information that is confidential under section 418.181 or section 418.182 of the Government Code. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 or section 418.182 of the Government Code.

---

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

You state, and we agree, some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city 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. The city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/jxd

Ref: ID# 953846

Enc. Submitted documents

c: Requestor  
(w/o enclosures)