



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2022

Ms. Logan Leal and Mr. Ben Stephens
Counsel for the Harris County Sports and Convention Corporation
Husch Blackwell, L.L.P.
600 Travis Street, Suite 2350
Houston, Texas 77002

OR2022-19736

Dear Ms. Leal and Mr. Stephens:

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# 953312.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for contracts between the corporation and specified entities pertaining to the provision of certain types of services. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: Aramark Sports and Entertainment Services, LLC, and Aramark Sports and Entertainment Services of Texas, LLC (collectively, "Aramark"); Houston Livestock Show and Rodeo, Inc.; and Houston NFL Holdings, L.P. Accordingly, you state the corporation 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.

¹ We note, in a letter sent on June 16, 2022, we asked the corporation to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the corporation on June 22, 2022, pursuant to that request. Additionally, we note the corporation did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(e). Nonetheless, because third party interests and section 552.101 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301, we will consider whether the information at issue is excepted from disclosure under the Act.

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 Aramark. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 the remaining 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 corporation 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 section 418.181 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). 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(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"). 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).

You assert the submitted information is made confidential under section 418.181. You state, and we agree, the corporation's stadium and arena facilities constitute critical infrastructure for purposes of section 418.181. *See id.* § 421.001 (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). You state the submitted information "show[s] detailed schematics of each different facility at NRG Park, including entrances [and] exits, . . . as well as the location of elevators and loading docks." You assert the information at issue "could, if released, lead to a malicious actor interfering with emergency response, communications, and safety in [the] case of a crowd control event, disaster, or emergency." Based on your representations and our review, we find you have demonstrated the release of some of the submitted information,

which we have marked, would identify the technical details of particular vulnerabilities of the corporation to an act of terrorism. Accordingly, the corporation 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. However, we find you have failed to demonstrate the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, we conclude the corporation may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Aramark raises section 552.104 of the Government Code for some of the remaining information at issue. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Aramark’s arguments under section 552.104 of the Government Code.

In summary, the corporation 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 corporation 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/jm

Ref: ID# 953312

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)