



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2022

Mr. Joseph Hays
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2022-22341

Dear Mr. Hays:

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# 959836 [PIR R064639].

The City of Houston (the "city") received a request for specified communications and financial information pertaining to the use of NRG Stadium for a specified event. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. The city also states release of some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified ASM Global-NRG Park ("ASM") and JDH Design ("JDH") 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 received comments from ASM and JDH. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses information that is made confidential by

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

other statutes, such as the Texas 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 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.177 of the Government Code states:

Information is confidential if the information

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.181 of the Government Code provides:

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. 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).

We understand the city, ASM, and JDM to assert, and we agree, some of the information at issue pertains to the city's critical infrastructure for the purposes of section 418.181 of the Government Code. *See 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 city also states the information at issue reveals specific details and vulnerabilities of security and safety plans for responding to an act of terrorism or related criminal activity. The city asserts release of the information would provide a criminal or terrorist with information with which to exploit security vulnerabilities and achieve maximum casualties in criminal activities. Based on these representations and our review, we find portions of the information at issue were collected, assembled, or maintained by a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relate to an assessment of the risk or vulnerability of persons and property to an act of terrorism or related criminal activity and would identify the technical details of particular vulnerabilities of critical infrastructure 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 sections 418.177 and 418.181 of the Government Code. However, we find the city, ASM, and JDM have failed to demonstrate any of the remaining information at issue is subject to section 418.176, section 418.177, or section 418.181 of the Government Code. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.110(b) of the Government Code states, "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(c). Upon review, we find ASM and JDC have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm, or is a trade secret. Therefore, the city may not withhold any portion of the remaining information at issue under section 552.110(b) or section 552.110(c) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social

security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² *Id.* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employees whose information are at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone services are not paid for by a governmental body, the city must withhold the cellular telephone numbers of city employees under section 552.117(a)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code §§ 552.117(a)(2); *see also id.* § 552.003(1-b)) (defining "honorably retired" for purposes of the Act). Section 552.117(a)(2) applies to current or honorably retired peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold peace officer cellular telephone numbers under section 552.117(a)(2) of the Government Code in the remaining information if the cellular telephone service is not paid for by a governmental body.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically exclude by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine if the e-mail addresses within the submitted information fall within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses in the submitted information are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. *See id.* § 552.137(b). However, to the extent the e-mail addresses are excluded by section 552.137(c), the city may not withhold them under section 552.137 of the Government Code.

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 418.177 and 418.181 of the Government Code. If the employees whose information are at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone services are not paid for by a governmental body, the city must withhold the cellular telephone numbers of city employees under section 552.117(a)(1) of the Government Code. The city must withhold peace officer cellular telephone numbers under section 552.117(a)(2) of the Government Code in the remaining information if the cellular telephone service is not paid for by a governmental body. To the extent the e-mail addresses in the submitted information are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining information must be released.

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/be

Ref: ID# 959836

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)