



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2022

Ms. Danielle Lam  
Counsel for Springs Hill Water Supply Corporation  
Lloyd Gosselink  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701

OR2022-36000

Dear Ms. Lam:

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# 981016.

The Springs Hill Water Supply Corporation ("SHWSC"), which you represent, received a request for as-built plans for a specified water line. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. 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 generally be related to a governmental body's security concerns or to a security system 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 identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. You assert, and we agree, SHWSC's public water system is critical infrastructure. *See generally id.* § 421.001(2). You state "damage to SHWSC's water mains would affect public health and safety by contaminating drinking water and disrupting water service to its member-customers." You also state release of the information at issue "identifies technical details of SHWSC's public water system that could be used by criminals or terrorists to target critical points in SHWSC's system." Based on these representations and our review of the information at issue, we find some of the information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, SHWSC must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>1</sup> 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. Accordingly, SHWSC may not withhold the remaining information under section 552.101 on the basis of section 418.181 of the Government Code.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

---

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

This office has long held that for the purposes of section 552.103, “litigation” includes “contested cases” conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). Likewise, “contested cases” conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute “litigation” for purposes of section 552.103. *See* Open Records Decision Nos. 588 (1991) (concerning former State Board of Insurance proceeding), 301 (concerning hearing before Public Utilities Commission). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, some of the factors this office considers are whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588.

You state SHWSC is a party to three ongoing administrative proceedings before the Public Utility Commission of Texas that are related to the documents responsive to the request. We understand the ongoing proceedings are being conducted according to the APA. Therefore, we agree litigation to which SHWSC is a party was pending on the date SHWSC received the request. Based on your representations and our review, we find the information at issue relates to the pending litigation. Therefore, SHWSC may withhold the remaining information under section 552.103 of the Government Code.

In summary, SHWSC must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. SHWSC may withhold the remaining information under section 552.103 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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/eb

Ms. Danielle Lam - Page 4

Ref: ID# 981016

Enc. Submitted documents

c: Requestor  
(w/o enclosures)