



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2022

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2022-37152

Dear Ms. Ellison:

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# 983178 (PIR# E050522).

The Houston Independent School District (the "district") received a request for information pertaining to a specified bond, a specified facilities condition assessment, and work orders for a certain school.¹ You state the district does not have information responsive to portions of the present request.² You also state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section

¹ You state, and provide documentation demonstrating, the district sought and received clarifications of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See* *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

552.101 of the Government Code.³ We have considered the exception you claim and reviewed the submitted representative sample of information.⁴

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, such as sections 418.181 and 418.182 of the Government Code, which were 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”). Section 418.182 provides, in pertinent part:

(a) [I]nformation . . . 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 assert, and we agree, district school facilities are critical infrastructure. *See generally id.* § 421.001. You explain the information at issue contains “detailed information concerning the location of entry and exit points, the status and functioning of door locks at entry and exit points, the status and functioning of fences, access gates, surveillance cameras, and other security systems” of a certain district school facility. You state the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. You assert release of the information at issue “could lead to a breach of security at [a district] school compromising the safety of [the district’s] students and employees and/or theft and damage of property.” Based on your

³ We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

⁴ 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 that those records contain substantially different types of information than that submitted to this office.

representations and our review, we find you have demonstrated some of the submitted information, which we marked, identifies the technical details of particular vulnerabilities of a district school to an act of crime or terrorism. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁵ 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, or 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. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with either section 418.181 or section 418.182 of the Government Code. The district 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/pt

Ref: ID# 983178

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.