



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2022

Mr. William C. Ferebee
City Attorney
City of Shenandoah
29955 Interstate 45 North
Shenandoah, Texas 77381

OR2022-38539

Dear Mr. Ferebee:

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# 990164.

The City of Shenandoah (the "city") received a request for the following: (1) information related to a named employee's alleged conflict of interest and (2) information related to the entry and exit of the named employee to a specified city building during a defined period of time. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the city's obligations under the Act with respect to some of the information requested. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the city received the request for information on September 19, 2022. We note the city argues against the disclosure of some of the information responsive to the

first category of the request as described above. However, as of the date of this letter, the city has not submitted those documents for our review. Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code with respect to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the city raises an exception to disclosure for the information at issue, because you have not submitted this information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order this information released pursuant to section 552.302. However, we will address the arguments against disclosure of the remaining information at issue, which was timely submitted.

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 protected by other statutes, including section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182 provides, in part:

(a) Except as provided by Subsections (b) and (c), information, 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. The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *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 section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We understand the submitted information consists of logs of badge swipes of the named employee created during the entry and exit of a city building. You state the information at issue reveals secured access point locations of the city building at issue and the dates and times the employee used the access points. The city contends release of the information at issue “would seriously compromise part of the city's security system.” Upon review, we find the submitted information consists of information in the possession of the city 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. Accordingly, we conclude the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.¹

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,

Colin Henry
Assistant Attorney General
Open Records Division

CEH/mo

Ref: ID# 990164

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.