



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Ms. Netosha Bryan
Counsel for the City of Wolfforth
Guevara Law, P.C.
201 South Lakeline Boulevard, Suite 704
Cedar Park, Texas 78613

OR2022-39127

Dear Ms. Bryan:

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# 990632.

The City of Wolfforth (the "city"), which you represent, received a request for a specified agreement. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Loop 88, LLC ("Loop 88"). Accordingly, you state, and provide documentation showing, the city notified Loop 88 of the request for information and of its 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 considered the exceptions you claim and reviewed the submitted information.

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 Loop 88 explaining why the submitted information should not be released. Accordingly, we have no basis to conclude Loop 88 has a protected proprietary interest in the submitted information, and the city may not withhold any portion of it on that basis.

See, e.g., id. § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides as follows:

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).

You state the information at issue relates to the city’s water system. You assert, and we agree, the city’s water system constitutes critical infrastructure for purposes of section 418.181 of the Government Code. *See generally 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”). You state release of this information would reveal the locations and vulnerabilities of the city’s water system and expose them to possible acts of terrorism. Based on these representations and our review, we find the city has demonstrated release of some of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, with the exception of the information we have marked, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ However, we find you have failed to demonstrate the information we have marked identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the city may not withhold the information we have marked under section 552.101 on the basis of section 418.181.

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

You raise section 552.113 of the Government Code for some of the information at issue. Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Id. § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase “information regarding the exploration or development of natural resources” means “information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation.” *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the “presence or absence of natural resources.” In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* Open Records Decision No. 669 (2000). Upon review, we conclude you have not demonstrated any of the remaining information at issue is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the city may not withhold any of the remaining information at issue under section 552.113 of the Government Code.

In summary, with the exception of the information we have marked, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 990632

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)