



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2022

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2022-39735

Dear Ms. Villarreal:

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# 990867 (ORR# 2022-0260-DA.CO).

Hidalgo County (the "county") received a request for all reports generated by ERO Architects. You state the county has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report that is subject to section 552.022(a)(1). The county must release the completed report pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. *See id.* The county seeks to withhold the information subject to section 552.022(a)(1) under sections 552.101, 552.108, and 552.111 of the Government Code. However, section 552.111 is discretionary in nature and do not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999)*

(waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the county may not withhold the submitted information under section 552.111 of the Government Code. However, we will consider your argument to withhold the information subject to section 552.022(a)(1) under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1). Additionally, because section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.101 for the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 418.181 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.181 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 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 section 418.181. *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 418.181 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).

You argue the submitted information is confidential under section 418.181 of the Government Code. You state the information at issue relates to details of the expansion plans and blueprints of a county jail. Specifically, you state the information concerns “inmate classification, current and proposed housing pod types and distribution designs, intake and transport traffic flows layouts, jail administration and support plans, and future utility information” as well as aerial photographs of the jail. You assert, and we agree, the jail is critical infrastructure for purposes of section 418.181. *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 the information at issue would reveal vulnerabilities of specific components of the jail and could allow an individual to anticipate weaknesses in the infrastructure of the jail. Based on these representations and our review of the information at issue, we find you have demonstrated the release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹

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

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 990867

Enc. Submitted documents

c: Requestor
(w/o enclosures)