



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2014

Ms. Elaine Nicholson
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2014-18501

Dear Ms. Nicholson:

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# 540909.

The City of Austin (the "city") received two requests from different requestors for information pertaining to the planning of a specified trail. You indicate you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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. As part of the Texas Homeland Security Act ("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 of the Government Code 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."

¹You acknowledge, and we agree, the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b), (e). However, because the city's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception. See Open Records Decision No. 150 at 2 (1977).

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 the 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 submitted information identifies the locations of karst features along the Barton Springs segment of the Edwards Aquifer. You inform us this segment of the Edwards Aquifer provides drinking water to approximately 50,000 city residents through municipal and private wells. You indicate, and we agree, the city's drinking water supply system is part of the city's critical infrastructure for purposes of section 418.181. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). You argue the information at issue reveals vulnerabilities of the city's drinking water supply systems to chemical and biological attacks. In support of this argument, you state public release of this information would make it impossible for the city to secure a large number of sites that are vulnerable to a potential introduction of toxic substances into multiple water supply systems. Based on your representations and our review, we find the city has demonstrated that release of some of the information at issue would identify the technical details of particular vulnerabilities of the city's drinking water supply system to an act of terrorism. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find you have failed to demonstrate how the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, none of the remaining information at issue is confidential pursuant to section 418.181 of the Government Code, and the city may not withhold it under section 552.101 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² *Id.* § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

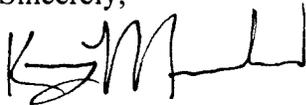
section 552.117 must be determined at the time the request for the information is made. See Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1); however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 540909

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)