



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2015

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Thockmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-12220

Dear Ms. Honey:

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# 568830 (City PIR No. W041715).

The City of Fort Worth (the "city") received a request for the water testing reports for a specified time period after a systematic failure at a specified water treatment plant.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. 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 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 assert, and we agree, the city's water system is critical infrastructure. *See generally id.* § 421.001 (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 the submitted information "pertains to the [city's] monitoring of predetermined sites or sampling stations throughout the [city]." You assert release of the information at issue "will jeopardize the lives of police officers, citizens, and other individuals." 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. Further, we find the city has failed to demonstrate how any of the remaining information relates to assessments of the risk or vulnerability of persons

or property to an act of terrorism or related criminal activity. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 or section 418.181 of the Government Code. As you raise no further exceptions to disclosure, 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# 568830

Enc. Submitted documents

c: Requestor
(w/o enclosures)