



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

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

OR2015-13184

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# 572081.

The City of Austin (the "city") received a request for records of a named individual's door access card swipes at a specified location and network login and logout times during specified time periods. We understand the city has released or will release some responsive information to the requestor. 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, which we understand constitutes a representative sample.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date of the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by other statutes, such as section 418.181 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. These provisions make certain information related to terrorism confidential. 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; *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”). The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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 the responsive information is confidential under section 418.181 of the Government Code. You state the responsive information indicates when the named individual enters and exits a city facility and “[t]his information could be used as a part of a plan to disrupt or cause harm to the [named individual], as well as the facility and its occupants.” You contend, and we agree, the facility is part of the city’s critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001. You further argue the responsive information “is useful to terrorists for identifying vulnerabilities of the building access point and would be useful in strategizing how and when to gain access to [the] facility in order to inflict death and injury to persons through the use of explosives or biological agents.” Based on your representations and our review, we find you have demonstrated the applicability of section 418.181 to the information at issue. Thus, the city must withhold the responsive information under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 572081

Enc. Submitted documents

c: Requestor
(w/o enclosures)