



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2016

Ms. Imelda B. Rodriguez
City Secretary
City of Eagle Pass
100 South Monroe
Eagle Pass, Texas 78852

OR2016-00777

Dear Ms. Rodriguez:

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# 593631 (Records Request# 2015-117).

The City of Eagle Pass (the "city") received a request for multiple categories of information pertaining to a specified detention pond. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. The city further states release of the information may implicate the proprietary interests of a named individual. Accordingly, the city states, and provides documentation showing, it notified the individual of the request for information and of the individual's right to submit arguments to this office as to why the information at issue 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).* As of the date of this letter, we have not received comments from the named individual. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note the requestor has asked the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the city has made a good-faith effort to do so.

Section 552.101 of the Government Code exempts 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 chapter 418 of the Government Code. 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. 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).

The city states it is located along the international border and is within a flood plain. The city explains the submitted information relates to a detention pond adjacent to the Eagle Pass Independent School District’s Language Development Center. The city asserts the detention pond represents a critical function of the city’s flood protection infrastructure. The city asserts, and we agree, the detention pond 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”). Based on the city’s representations and our review, we find the city has demonstrated the release of the information at issue would identify the technical details of particular vulnerabilities of the city to an act of terrorism. Thus, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.²

²As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 593631

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)