



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. T. Daniel Santee
Counsel for the City of Fair Oaks Ranch
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2016-01837

Dear Mr. Santee:

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# 595493.

The City of Fair Oaks Ranch (the "city"), which you state you represent, received a request for specified information pertaining to the city water supply and city wells. You state you do not possess some information responsive to this request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor asks the city to answer a number of 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 any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

We next note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2003-9083 (2003). In that ruling we determined the city must release the submitted information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. You now assert the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Because section 552.101 of the Government Code makes information confidential under the Act, we will address your argument under this section for the 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 that is made confidential by other statutes. You raise section 552.101 in conjunction with 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 HSA. 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 measures 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 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 state the city relies "solely on a network of water wells and transport lines from those wells for its potable water supply." You explain the submitted information contains "the specific location, fluid level measurements, bottom hole pressure measurements, rate

capacity, as well as casing and pump information for that system of wells.” You contend, and we agree, the city’s water supply system is part of the city’s 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 that public release of the submitted information “would . . . greatly increase the vulnerability of the water supply,” and put the public health and safety at risk. Based on your representations and our review of the information at issue, we find that you have demonstrated the applicability of section 418.181 to the submitted information. Thus, the city must withhold the submitted information under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code.²

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 595493

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.