



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2016

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

OR2016-04296

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# 599379.

The City of Austin (the "city") received a request for all information showing or referencing voids or other geotechnical issues in the planning and environmental studies of the construction of the bicycle bridge over Barton Creek; a copy of the approved Water Pollution Abatement Plan, including any supporting geological assessments and any correspondence with the Texas Commission on Environmental Quality; and all historic information on geological assessments of and voids encountered when the Mopac highway was built. We understand you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 that those records contain substantially different types of information than that submitted to this office.

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.” *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 information you have marked 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 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 you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note some of the remaining information is subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, and the cellular telephone service is not paid for by a governmental body, the city must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, then the city may not withhold any of the information at issue under section 552.117(a)(1).

In summary, the city must withhold the information you 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 cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, and a governmental body does not pay for the cellular telephone service. The remaining information must be released.

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/>

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

[url_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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a large, stylized initial 'T' and 'H'.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 599379

Enc. Submitted documents

c: Requestor
(w/o enclosures)