



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

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

OR2016-15218

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# 617115.

The City of Austin (the "city") received a request for information pertaining to a specified easement and permit. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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." *Id.* § 552.101. Section 552.101 encompasses information subject to chapter 66 of the Utilities Code, which created a state-issued cable and video franchise to be administered by the Public Utility Commission. *See* Util. Code §§ 66.003, .004. Section 66.011 provides for

¹You acknowledge the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

municipal police powers and other authority in connection with a public right-of-way to the holders of a state-issued certificate of franchise authority. You raise section 552.101 in conjunction with section 66.011(a)(2) of the Utilities Code, which provides in relevant part:

(a) A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a state-issued certificate of franchise authority within the municipality. A municipality may enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose on activities of the holder of a state-issued certificate of franchise authority a requirement:

...

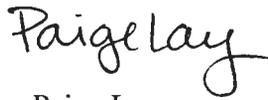
(2) regarding the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way except that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way. Any maps or records of the location of a communications network received by a municipality shall be confidential and exempt from disclosure under Chapter 552, Government Code, and may be used by a municipality only for the purpose of planning and managing construction activity in the public right-of-way. A municipality may not request information concerning the capacity or technical configuration of the holder of a state-issued certificate of franchise authority's facilities[.]

Util. Code § 66.011(a)(2). "Communications network" under section 66.011(a)(2) means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services. *Id.* § 66.002(4). You state the requestor seeks information related to the installation of fiber optic cables in a particular area. You state the submitted map and location information pertains to a fiber optic line that is part of a communications network. We understand the city requested the maps and records at issue for the purpose of locating the portions of the communications network that occupy public rights-of-way. Accordingly, we find the city must withhold the submitted map and location information under section 552.101 of the Government Code in conjunction with section 66.011(a)(2) of the Utilities 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 617115

Enc. Submitted documents

c: Requestor
(w/o enclosures)