



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2016

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

OR2016-15423

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# 619562.

The City of Austin (the "city") received a request for information referencing Golden-cheeked Warblers identified in a specified location during a specified time period and information created during a specified time period referencing potential cumulative and/or indirect impacts to water and/or endangered species that may be expected from two specified projects. You claim some of the requested information is 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

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

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.

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).

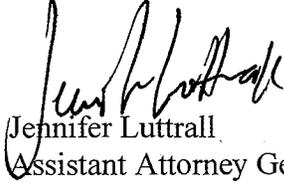
You state the information you have marked identifies the locations of karst features along segments of the Edwards Aquifer. You inform us these segments of the Edwards Aquifer provide drinking water to approximately 50,000 city residents through municipal and private wells. You indicate, and we agree, 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. 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/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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 619562

Enc. Submitted documents

c: Requestor
(w/o enclosures)