



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2016

Ms. Lola Dada-Olley
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-18791

Dear Ms. Dada-Olley:

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# 623381 (Plano ORR# 16-019).

The City of Plano (the "city") received a request for information relating to monthly backflow prevention tests. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

The city states this office previously ruled on some of the requested information in Open Records Letter Nos. 2011-02779 (2011) and 2011-04512 (2011). In Open Records Letter No. 2011-02779, this office concluded 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. In Open Records Letter No. 2011-04512, this office concluded the city must continue to rely on Open Records Letter No. 2011-02779 as a previous determination and withhold the information at issue in accordance with that ruling. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed.

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.

Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter Nos. 2011-02779 and 2011-04512 as previous determinations and withhold the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Next, we address the city's argument against the disclosure of the submitted information that is not subject to these prior rulings.

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. Section 552.101 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 "[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; *see also 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, and functions vital to the state or the nation"). The fact information may generally be related 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 a claimed provision. As with any confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 the remaining information relates to the city's water system, which is part of the city's critical infrastructure. The city explains the purpose of backflow devices is to prevent the contamination of water by entry of contaminants into the city's water system. Thus, the city argues the information could be used to identify the technical details of particular vulnerabilities of the city's water system to an act of terrorism. Based on the city's representations and our review, we agree the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the city must continue to rely on Open Records Letter Nos. 2011-02779 and 2011-04512 as previous determinations and withhold the identical information in accordance with those rulings. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government 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,

A handwritten signature in cursive script, appearing to read "Paige Thompson".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 623381

Enc. Submitted documents

c: Requestor
(w/o enclosures)