OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 30, 2003

Ms. Jeanene McIntyre
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2003-4447

Dear Ms. McIntyre:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183120.

The City of Arlington (the "city") received a request for a copy of the vulnerability assessment of the city's water system. You claim that the requested document is excepted from disclosure under sections 552.101, 552.108, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample information.[1] We have also considered the comments submitted by an interested third-party. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that the Seventy-eighth Legislature recently added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. House Bill 9 which became effective on June 22, 2003, provides in relevant part:

[1]This letter ruling assumes that the submitted sample information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

> Sec. 418.177. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO RISK OR VULNERABILITY ASSESSMENT.
>
> Information is confidential if the information:
>
> (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
>
> (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Act of June 2, 2003, 78th Leg., R.S., H.B. 9, § 3 (to be codified at Gov't Code § 418.177). You indicate that the requested document describes the city's water system and discusses potential vulnerabilities the system may have to attack. After reviewing your arguments and the submitted documentation, we conclude that the requested document is a vulnerability assessment that is made confidential under section 418.177 of the Government Code. Accordingly, the requested document must be withheld from disclosure under section 552.101 of the Government Code. Because we are able to make a determination under section 418.177, we need not address the applicability of your claimed exceptions to disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

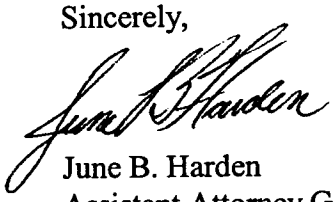
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 183120

Enc: Submitted documents

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(w/o enclosures)