



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 24, 2003

Mr. James Rader  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2003-8462

Dear Mr. Rader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191766.

The Lower Colorado River Authority (the "LCRA") received a request for a copy of its fiber system map. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Initially, we note that the LCRA failed to submit the requested information to this office within the statutory fifteen business day period. *See* Gov't Code § 552.301(e)(1)(D). The LCRA's failure to comply with the procedural requirements of the Public Information Act results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption of openness, the LCRA must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of section 552.101 provides such a compelling reason, we will address the LCRA's arguments against disclosure.

Section 552.101 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. Through the passage of House Bill 9, the Seventy-eighth Legislature 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. You specifically assert that the requested fiber system maps are confidential under section 418.181, which provides as follows:

Sec. 418.181. CONFIDENTIALITY OF CERTAIN INFORMATION  
RELATING TO CRITICAL INFRASTRUCTURE.

Those 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.

Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (Vernon) (to be codified at Gov't Code § 418.181). The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under House Bill 9. *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 exception to disclosure, a governmental body asserting one of the confidentiality provisions enacted by House Bill 9 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).

In this instance, you state that "[t]he majority of the LCRA's administrative and operational facilities are connected via a transport system comprised of fiber optic cable and digital microwave." You also state that the fiber optic system transmits mobile radio traffic of certain public safety entities. You explain that the requested maps reveal the physical locations of fiber routes and identify which routes are protected and unprotected. You further explain that terrorists could use this information to pinpoint vulnerable aspects of the system thereby making it easier to disable. Finally, you state that if the system were disabled, the security of many communities could be compromised. After reviewing your arguments and the submitted maps, we find that you have demonstrated that the release of the requested information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 1, 2003 Tex. Sess. Laws Serv. 4809 (Vernon) (to be codified at Gov't Code § 421.001) (defining "critical infrastructure" to "include[] all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). Thus, the requested fiber optic maps must be withheld from disclosure under section 552.101 in conjunction with section 418.181.

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).

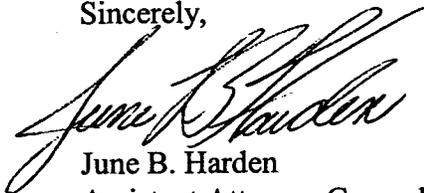
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 191766

Enc: Submitted documents

c: Mr. Harvey V. Janelli  
7973 Northeast Sunnywoods Lane  
Kingston, Washington 98346  
(w/o enclosures)