



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2005

Mr. Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2005-01303

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217983.

The Texas Commission on Environmental Quality (the "commission") received a request for

1. A list of Texas Dams, including but not limited to: name of dam, county, city, date of last inspection, hazard level and whether an EAP has been filed [;]
2. A list of all dams considered to be unsafe or deficient in any way;
3. All current EAP's filed;
4. A list of all current dam inspectors, number of dams inspected in 2002, 2003 and 2004; [and]
5. Any information regarding cuts in budget for the dam inspection program over the past 5 years.

The commission has released some information but claims that "the EAPs, information regarding hazard levels of the dams, and any listing of dams considered to be unsafe or deficient" are excepted from disclosure under section 552.101 of the Government Code in

conjunction with provisions of the Texas Homeland Security Act. We have considered the exception you claim and have reviewed the submitted sample of information.¹

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. As part of the Texas Homeland Security Act, the Seventy-eighth Legislature enacted sections 418.176 through 418.182 on June 2, 2003.² These provisions became effective on June 22, 2003 and make certain information related to terrorism confidential. You assert that the information at issue is now confidential under section 418.181, which provides that “[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.” The commission explains an Emergency Action Plan

provide[s] a systematic means in responding to an emergency condition which may or could threaten the safe operation of the dam, to prevent or minimize failure, and to reduce any resulting loss of life or property when a failure occurs. The plans on file with the agency include the authority’s personnel by name and title, notifications to be given by the project manager and sample messages in the event of an emergency, a statement of purpose, emergency detection and classification information to include an act of war or terrorism, a flow chart with emergency contact numbers, and a site specific description of the dam, its location, construction, capacity, spillways, powerhouse, and diagrams confirming the details of its construction.

Based on your arguments and our review of the submitted information, we conclude that the emergency actions plans and the columns identifying the dam’s hazard level and reason for unsafe designation identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* 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, and functions vital to the state or the nation”). Therefore, this information is confidential under section 418.181 of the Government Code

¹We assume that 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.

²Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (Vernon).

and excepted from release under section 552.101.³ The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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.

³Because we are able to resolve this under section 418.181, we do not address your other arguments for exception.

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 black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 217983

Enc: Submitted documents

c: Ms. Nanci Wilson
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(w/o enclosures)