



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2006

Ms. Karen H. Brophy
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2006-14727

Dear Ms. Brophy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 265600.

The City of Arlington (the "city") received a request for the architectural drawings of the Dallas Cowboys Complex (the "complex"). In August, the city received a request for the preliminary drawings of the complex. At the time of that request, the city did not assert any exceptions to disclosure on its behalf. Instead, the city allowed the interested third parties to assert their proprietary claims. In response to the August request, this office issued Open Records Letter No. 2006-13186 (2006) in which we concluded that the city must make the preliminary drawings and plans of the complex available to the public. You explain that the 508 documents responsive to the current request are far more detailed than the preliminary drawings that were previously addressed by this office. You assert that most of the 508 drawings are excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ Additionally, you state that the release of the requested drawings and plans may implicate the proprietary interests of certain third parties. Pursuant to section 552.305 of the Government Code, you notified a representative of the Dallas Cowboys of the request and of the opportunity to submit comments to this office. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested

¹You have submitted an index indicating those documents for which the city does and does not claim an exception to disclosure. Since those records for which you do not claim an exception were not submitted for our review, we presume that the city has made those records available to the requestor. *See Gov't Code §§ 552.006, .221; Open Records Decision No. 664 (2000).*

information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the arguments and have reviewed the submitted sample drawings.²

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that the requested drawings are 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.” *Id.* § 418.181. Additionally, you assert that some of the responsive drawings and plans are confidential under section 418.176, which protects, among other things, information maintained by a governmental entity for the purpose of responding to an act of terrorism and relates to the tactical plan of an emergency response provider. *See id.* § 418.176.

The fact that information may relate to the security concerns of a governmental body or a private entity does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). A governmental body or third party asserting sections 418.176 and 418.181 must adequately explain how the responsive records fall within the scope of those provisions. *See generally* Gov't Code § 552.301(e)(1)(A).

This office has already determined that the complex is “critical infrastructure” for purposes of section 418.181. *See* ORL 2006-13186 at 2; *see generally* Gov't Code § 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). The sample records are technical drawings that detail the method of construction of the floors, walls, ceilings, roof, doors, corridors, entrances, and exits of the complex. The city has submitted affidavits from the assistant fire chief and the deputy chief of police (collectively, the “chiefs”). In their affidavits, the chiefs explain how these drawings reveal the vulnerabilities of the complex and how a would-be terrorist could use such information to his advantage. Additionally, the chiefs explain how certain information in the drawings is used to determine response strategies for incident mitigation and rescue. After reviewing the chiefs' arguments and the submitted sample drawings, we conclude that the city must

²We assume that the sample records submitted to this office are 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.

withhold the X sheets, the 200 series, the 700 series and the 1200 series under section 552.101 in conjunction with section 418.176 of the Government Code. In addition, the 300 series, the 400 series, the 600 series, and the 800 series are confidential under section 552.101 in conjunction with section 418.181 of the Government Code.³

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); *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 Office of the Attorney General at (512) 475-2497.

³As our determination under section 552.101 is dispositive, we need not address any of the remaining arguments against disclosure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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/sdk

Ref: ID# 265600

Enc: Submitted documents

c: Mr. Jeff Mosier
1000 Avenue H East
Arlington, Texas 76011
(w/o enclosures)

Mr. David W. Taft
1030 Shortleaf Pine Drive
Arlington, Texas 76012-2575
(w/o enclosures)

Mr. Denis Braham
Winstead Sechrest & Minick
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(w/o enclosures)

Mr. Edward F. Broderick, Jr.
Broderick, Newmark & Grather
20 South Street
Morristown, New Jersey 07960
(w/o enclosures)