



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2006

Mr. Stephen C. Jacobs
Locke, Liddell & Sapp, L.L.P.
3400 JPMorgan Chase Tower
600 Travis
Houston, Texas 77002-3095

OR2006-13871

Dear Mr. Jacobs:

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# 265416.

The Houston Area Water Corporation (the "corporation"), which you represent, received a request for the following information:

1. "Documents created subsequent to September 11, 2001 relating to, reflecting, or constituting any study, analysis or assessment performed . . . for the purpose of preventing or guarding against terrorist activity involving in any way the EWP, SEWPP, NEWPP, Groundwater Systems, Untreated Water Conveyance Systems, and Water Transmission and Distribution Systems."
2. "Documents issued subsequent to September 11, 2001 relating to, reflecting, or constituting guidelines, rules, manuals, or operating procedures regarding the provision of security at each of the EWPP and the SEWPP and their respective Untreated Water Conveyance Systems[.]"
3. "Documents relating to or reflecting an incident occurring in May 2006 in which a television news crew breached security at the EWPP."
4. "Documents relating to an intruder or intruders apprehended at the EWPP in July 2006."

5. “Documents relating to, reflecting, or constituting communications involving an individual employed by or associated with the City [of Houston] or the [corporation] and any other individual regarding the protection of the NEWPP, SEWPP, or EWPP against terrorist activities.”

You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative 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 made confidential by other statutes. You assert the submitted information is confidential in its entirety under specific provisions of the Texas Homeland Security Act, sections 418.175 through 418.182 of the Government Code. The fact that information may relate to a governmental body’s security concerns 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 provisions 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 of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A).

Section 418.177 of the Government Code provides the following:

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.

Id. § 418.177. The submitted information identifies security enhancements and protective measures taken by the corporation to prevent, detect, or investigate terrorist activity as well

¹We assume that the 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.

as vulnerability assessments of the City of Houston's water systems. You argue that disclosure of the submitted information regarding the corporation's water distribution facilities "would have obvious and potentially disastrous implications to the ability of the [City of Houston] and the [c]orporation to safeguard the water supplied by the City and the" corporation's purification plants. Based on your claims and our review, we agree that the submitted information is confidential under section 418.177 of the Government Code and it must be withheld pursuant to section 552.101 of the Government Code.²

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).

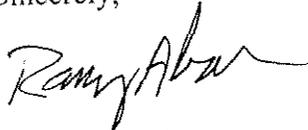
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling,

²As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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.

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca". The signature is fluid and cursive, written over a white background.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 265416

Enc. Submitted documents

c: Mr. Robert A. Plessala
1500 Woodson Tower
2919 Allen Parkway
Houston, Texas 77019
(w/o enclosures)