



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2006

Mr. Rashaad V. Gambrell
Assistant City Attorney
Legal Department
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2006-14574

Dear Mr. Gambrell:

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#266615.

The Houston Fire Department (the "department") received a request for information pertaining to six specified high-rise buildings, including (1) a copy of the high-rise fire safety plans, (2) names, company, building addresses, and certification dates of certified property managers and tenant fire wardens for the specified high-rise buildings, (3) a list of all fire drills conducted at the buildings in the last year, and (4) the electronic version of the database/spreadsheet of the "list of all high-rise buildings for Fire Safety Plan Approvals." You state that Exhibits 2 through 7 consist of the entirety of the responsive information in the department's custody.¹ Although you take no position regarding the public availability of the submitted information, you believe that this information, which pertains to property managed by PM Realty, ("PM"), may implicate the company's proprietary interests. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the department notified the appropriate property managers and PM of the request for information and of its right to submit arguments

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

explaining why the information concerning the company should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have reviewed the submitted information and considered PM's submitted arguments.

PM seeks to withhold the submitted information under section 552.101 of the Government Code and claims the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure. Section 552.101 of the Government Code 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, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.176 provides:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Gov't Code § 418.176. 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 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 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) (governmental body must explain how claimed exception to disclosure applies). Upon review, we find that PM has failed to demonstrate that the submitted information is maintained for the purpose of responding to an act of terrorism. Therefore, no portion of the submitted information may be withheld as confidential under section 418.176 of the Government Code.

PM also seeks to withhold the submitted information under section 418.181 of the Government Code. Section 418.181 of the Government Code provides:

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.

Gov't Code §§ 418.181. Upon review of PM's arguments, we find that PM has failed to submit any arguments explaining how the buildings at issue constitutes a critical infrastructure that would fall within the scope of section 418.181 of the Government Code. We therefore determine that the department may not withhold any of the submitted information under section 552.101 in conjunction with any of the provisions of the Texas Homeland Security Act.

PM further asserts that the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). Although PM raises section 552.110 of the Government Code, PM does not submit any arguments explaining how the exception applies to the submitted information. Thus, we find that PM has failed to demonstrate how any of the submitted information is confidential under section 552.110 of the Government Code. Accordingly, no portion of the submitted information may be withheld on this basis. As PM raises no further exceptions to disclosure of the submitted information, it must be released to the requestor.

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

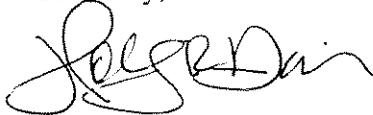
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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.

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krf

Ref: ID# 266615

Enc. Submitted documents

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