



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2007

Ms. Angela M. Deluca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2007-08216

Dear Ms. Deluca:

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# 284006.

The City of College Station (the "city") received a request for the phone records and e-mails to or from one named individual that were sent or received from another named individual. In addition, the requestor requests the e-mails that he sent to a named individual and the e-mails that the named individual sent to him. The requestor also requests the start dates of two named individuals and who does and does not have access to city buildings since the installation of the new security system. You state that you have released portions of the requested information. Initially, you assert that the submitted e-mails are not subject to the Act. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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.

Initially, you claim that a portion of the submitted information, which consists of e-mails, is not subject to the Act. Section 552.002(a) of the Act provides:

(a) In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). After reviewing the submitted e-mails, we find that they do not relate to the city’s transaction of official business. *See id.* (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). The submitted e-mails consist of personal e-mails. Therefore, the city is not required to disclose the submitted e-mails under the Act.

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 made confidential by other statutes. You assert that a portion of Exhibit B is confidential under section 418.181 of the Texas Homeland Security Act (the “HSA”). Section 418.181 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. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *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 HSA 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, pages B-13 through B-18 consist of a list of names of people who have access to the city's utility building and the hours when they may gain access. Although the city generally argues that release of the list would reveal the building's vulnerability, the city failed to demonstrate how a person can use this information to gain access to the building. Thus, you have not demonstrated that pages B-13 through B-18 are confidential under section 418.181 of the Government Code. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). We therefore determine that the city may not withhold pages B-13 through B-18 under section 552.101 in conjunction with section 418.181 of the Government Code.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.133(b). Section 552.133(a)(3) defines a "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c).

You inform us, and provide documentation showing, that the city council, as governing body of the city's public power utility, passed a resolution by vote pursuant to section 552.133 in which the city council "delineated a list of competitive matters, including Business

operations.” Upon review of the submitted resolution, however, we do not find building access to be one of the business operations defined in the resolution as a competitive matter. Therefore, we find that the city failed to sufficiently demonstrate that pages B-13 through B-18 reasonably relate to any “competitive matter” that has been adopted in good faith by the city council. Accordingly, we conclude that the city may not withhold pages B-13 through B-18 from disclosure pursuant to section 552.133 of the Government Code. As you raise no other arguments against disclosure of this information, it must be released.

In summary the city need not release the submitted e-mails because they are personal in nature and not subject to the Act. 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).

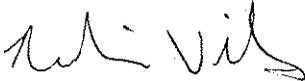
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Melanie J. Villars". The signature is fluid and cursive, with the first name "Melanie" and last name "Villars" clearly distinguishable.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 284006

Enc. Submitted documents

c: Mr. Charles Johnson
3328 Longleaf
College Station, Texas 77845
(w/o enclosures)