



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2007

Ms. Julie Y. Fort  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2007-14584

Dear Ms. Fort:

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# 294378.

The Clear Creek Watershed Authority (the "CCWA"), which you represent, received a request for specified financial information and documents pertaining to "each dam/structure that needs repair" of the seventy dams that CCWA operates. You state that the financial information is being released, but claim that the submitted documents are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that some of the information you have submitted to us for review and that you seek to withhold, such as information that reveals how to gain access to the properties at issue and whether the gates on the property are locked, is not responsive to the requested

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<sup>1</sup>We 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.

categories of information. This ruling does not address the public availability of any information that is not responsive to the request, and the CCWA is not required to release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 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 418.181 of the Government Code 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.” But the fact that information may relate to a governmental body’s security concerns or emergency management activities 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).

The submitted information contains the following: (1) the CCWA’s drainage plan, (2) an aerial photograph of a CCWA regulatory flood hazard area, (3) initial inspection reports, and (4) final inspection reports. You inform us that the structures at issue are earthen dams that are located on private property, and that the CCWA obtained easements “from the property owners for purposes of constructing, operating and maintaining the dams.”<sup>2</sup> You assert that the requested information “reveals the actual details of the construction [of the dams], the strong and weak points in design and condition, and they amount to a blueprint for how to maximize damage to a populated area while minimizing the effort.” However, the information at issue does not reveal specific construction details of the structures at issue. For example, the submitted inspection reports only address routine maintenance issues, e.g., “Remove beaver dam,” “Maintenance road needs repair,” “Cactus and briars need control.” In addition, we note that the CCWA has published the submitted drainage plan on its own website. After review of your arguments and the submitted information, we conclude you have failed to establish that the submitted information identifies technical details of particular

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<sup>2</sup>You have submitted a copy of one such easement, which was filed in the real property records of the county clerk’s office. *See* Local Gov’t Code § 191.006 (“All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times.”).

vulnerabilities of the CCWA's dams to an act of terrorism; therefore, the CCWA may not withhold the submitted responsive information under section 552.101 in conjunction with section 418.181 of the Government Code, but instead must release it 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).

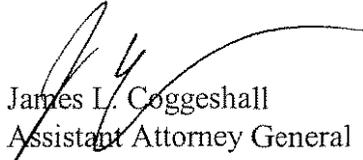
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 294378

Enc. Submitted documents

c: Mr. Charles Pedraso  
P.O. Box 1032  
Sanger, Texas 76266  
(w/o enclosures)