



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2008

Mr. Bradford E. Bullock
McKamie Law
13750 San Pedro, Suite 640
San Antonio, Texas 78232

OR2008-05961

Dear Mr. Bullock:

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# 310830.

The City of Boerne (the "city"), which you represent, received a request for a specified wastewater treatment plant preliminary process and site evaluation. You state that the city is willing to disclose the full report to the requestor, but you claim that two of the submitted proposed plant layout maps are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that other statutes make confidential. You raise section 418.181 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.181 provides as follows:

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.

Id. § 418.181; *see generally id.* § 421.001 (defining critical infrastructure to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation”). The fact that information may relate to a governmental body’s security measures 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 of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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).

You assert that the proposed wastewater treatment plant layout maps, marked as Exhibits C and D, should be protected from disclosure because the precise layout of either an existing plant or a new wastewater treatment plant could subject these critical infrastructure facilities to possible attack. You argue that release of this information would “expose potential vulnerabilities of the system by showing a potential terrorist where the most damage could be inflicted by disrupting service to critical points of the system.” Based on your representations and our review, we conclude that the city has adequately explained how the maps at issue fall within the scope of section 418.181 of the Government Code. Therefore, Exhibits C and D must be withheld from disclosure under section 552.101 of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 310830

Enc. Submitted documents

c: Mr. Milan J. Michalec
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(w/o enclosures)