



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2008

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2008-07313

Dear Ms. Shortall:

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# 311270.

The City of Arlington (the "city") received nine requests for specified test results related to the city's water supply. You claim that the requested information is 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. You raise section 552.101 in conjunction with certain provisions of the Texas Homeland Security Act. Specifically, you claim that the submitted information is subject to sections 418.177 and 418.181 of the Government Code. 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).

Section 418.177 provides that information is confidential if it

(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. Thus, if a governmental body seeks to withhold information under section 418.177, it must first demonstrate that the information is collected, assembled, or maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. You inform us that last year the city's Water Utilities Department voluntarily conducted a test for pharmaceuticals contained in the city's water supply. You do not argue, nor does it appear, that the test was conducted for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. *See id.* § 418.117(1). Furthermore, even if the test was conducted for terrorism purposes, the city must demonstrate how this information is an assessment of the risk or vulnerability to an act of terrorism. You state that the submitted information identifies to what extent the city's water utilities can and cannot treat the source water to remove pharmaceuticals. The submitted information, however, only consists of the pharmaceutical names and amounts. You have not explained how information regarding the city's ability to treat the source water to remove pharmaceuticals can be ascertained from the submitted pharmaceutical names and amounts. Therefore, the submitted information is not confidential under section 418.177.

Section 418.181 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. *Id.* § 418.181. You argue that the submitted information identifies to what extent the city's water utilities can and cannot treat the source water to remove pharmaceuticals. As stated above, the submitted information only reveals the pharmaceutical names and amounts. Because you have not explained how information regarding the city's ability to treat the source water can be ascertained from the submitted information, you have failed to demonstrate that section 418.181 is applicable to the submitted information. Therefore, none of it may be withheld under section 418.181. *See Open Records Decision Nos. 542 (1990) (governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980).* As you raise no other exceptions to disclosure, the city must release the submitted information to the requestors.

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).

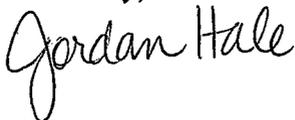
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 311270

Enc. Submitted documents

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