



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 1, 2009

Mr. Ron Patterson  
Interim-City Secretary  
City of Frisco  
6101 Frisco Square Boulevard  
Frisco, Texas 75034

OR2009-04204

Dear Mr. Patterson:

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# 342054.

The City of Frisco (the "city") received a request for information pertaining to the city's elevated water storage tanks. You claim that the submitted water system plan is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

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 exception encompasses information that other statutes make confidential. 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. You assert that the submitted water system plan is confidential under section 418.181 of the Government Code, which 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.

*Id.* § 418.181. 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 the Texas Homeland Security Act 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).

The submitted plan relates to the city's public water system. You assert and we agree that the city's water system is part of the city's critical infrastructure for purposes of section 418.181. *See* Gov't Code § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). You assert, and provide an affidavit from the city's Director of Public Works (the "director") stating, that the submitted plan reveals the actual details of the location, height, and capacity of each elevated water storage tank in the city. The director further argues that release of this plan would "identify the engineering and technical details of particular vulnerabilities of . . . the water and sewer systems of the city." Based on your representations and our review of the submitted documents, we conclude you have adequately explained how the submitted water system plan falls within the scope of section 418.181 of the Government Code. Therefore, the submitted information must be withheld from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 342054

Enc. Submitted documents

c: Requestor  
(w/o enclosures)