



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

Mr. Duane Mungia
City Administrator
City of Stratford
P.O. Box 188
Stratford, Texas 79084

OR2009-05692

Dear Mr. Mungia:

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# 342429.

The City of Stratford (the "city") received a request for the "plans/blueprints of the proposed wastewater treatment facility." You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative

¹While you do not raise section 552.101 of the Government Code in your brief, based on your arguments we understand the city to assert section 552.101.

samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The submitted documents indicate the city received the request on March 4, 2009. However, you did not submit to this office written comments explaining why your claimed exception applied to the requested information, nor did you submit a copy of the information at issue, until March 31, 2009. Consequently, you did not meet the fifteen-business-day deadline and thus failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address your argument under this exception.

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 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 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 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 state the blueprints show vulnerabilities of the city's critical infrastructure based on the potential for discharge of raw sewage, as well as vulnerabilities of the city waste water

system. *See id.* § 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 explain that “[w]ith the [blueprints] an individual will know the precise area(s) that would be most likely to result in a discharge of raw sewage waste” and “a terrorist could use such information to shut down power, disable back-up power and cause a health risk or contaminate surrounding residential area and farmland with a discharge of raw sewage.” Finally, you state “[w]ith a large enough discharge there is a potential to contaminate one of the city’s fresh water wells used to provide drinking water.” After reviewing your arguments and the information at issue, we conclude the city has adequately explained how the submitted information falls within the scope of section 418.181 of the Government Code. Therefore, the submitted blueprints 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, 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 342429

Enc. Submitted documents

cc: Requestor
(w/o enclosures)