



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-09039

Dear Ms. De La Garza:

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# 347566.

The City of Houston (the "city") received a request for the plant name, plant type, and physical address of water and wastewater plants. You state that you are releasing the wastewater plant information to the requestor. You claim that the submitted 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 public 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 another statute makes confidential. You raise section 552.101 in conjunction with 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 (the "HSA"). 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; *see also 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 HSA. *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 that “release of the exact physical addresses of the water treatment plants will make these sites vulnerable to a potential introduction of toxic substances into multiple water supply systems.” Upon review of the submitted information, we find that a portion of the submitted information would identify details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with section 418.181 of the Government Code. We note, however, the Texas Commission on Environmental Quality maintains a website listing many of the water treatment plants and their addresses. In addition, the city reveals the location of some of its water treatment plants on its own website through various executed contracts. Accordingly, we conclude you have failed to establish that releasing the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, you have not demonstrated that any of portion of the remaining information is made confidential under section 418.181 of the Government Code. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). We therefore determine that the city may not withhold any of the remaining information under section 552.101 in conjunction with section 418.181. As you raise no further exceptions against the disclosure of this information, it must be released to the requestor.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 347566

Enc. Submitted documents

cc: Requestor
(w/o enclosures)