



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2009

Mr. B. Chase Griffin
Brown & Hofmeister, L.L.P.
Attorney for City of Flower Mound
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-11184

Dear Mr. Griffin:

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# 351748.

The Town of Flower Mound (the "town"), which you represent, received a request for "all waste and wastewater analyses done for the Riverwalk project, prior to and including the newest technology." 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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." *Id.* § 552.101. This exception encompasses information that other statutes make 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 the submitted documents “identify technical details of the [t]own’s utility system which could be used by terrorists to disrupt governmental functions or affect public health.” Upon review of your arguments and the information at issue, we conclude that the information we have marked reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the town must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, you have failed to establish that release of the remaining submitted information would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, you have not demonstrated that any of the remaining information is 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). As you raise no further exceptions against disclosure, the town must release the remainder of the submitted information.

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,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name "Ryan" being more prominent than the last name "Mitchell".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 351748

Enc. Submitted documents

cc: Requestor
(w/o enclosures)