



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2009

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2009-16577

Dear Ms. Grace:

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# 362532 (TM# 45679).

The City of Austin (the "city") received a request for five categories of information pertaining to a specified water treatment plant. You state most of the requested information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the city failed to meet the deadlines set forth in section 552.301 of the Government Code by submitting supporting arguments and the responsive information beyond the deadline required under section 552.301(e). *See* Gov't Code § 552.301(e)(1)(A), (D). 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex.

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<sup>1</sup>We note that in your letter dated September 29, 2009, you withdrew your previous assertion of section 552.111 of the Government Code.

App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your claim under this exception.

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 contend that the submitted information, which consists of maps showing the location of karsts along the Barton Springs segment of the Edwards Aquifer, is confidential under section 418.181. You inform us that this segment of the Edwards Aquifer provides drinking water to approximately 50,000 city residents through municipal and private wells. You indicate, and we agree, that the city’s drinking water supply system is part of the city’s critical infrastructure for purposes of section 418.181. *See generally 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 argue that the submitted information reveals vulnerabilities of drinking water supply systems to chemical and biological attacks. In support of this argument, you state that public release of this information would make it impossible for the city to secure a large number of sites

that are vulnerable to a potential introduction of toxic substances into multiple water supply systems. Based on your representations and our review of the information at issue, we find that you have demonstrated the applicability of section 418.181 to the submitted information. Thus, the city must withhold the submitted information under section 552.101 on the basis of section 418.181.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID# 362532

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)