



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2009

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

OR2009-16801

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# 362687 (Austin TM No. 45682).

The City of Austin (the "city") received a request for the Duval Dams Emergency Action Plan ("EAP"). 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." *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 assert that the submitted EAP "provides a systematic means to respond to an emergency condition that may or could threaten the safe operation of the dams at issue, to prevent or minimize failure, and to reduce any resulting loss of life or property when a failure occurs." You state that the EAP is on file with the Texas Commission on Environmental Quality, and includes emergency detection and classification information, site specific descriptions and maps of the dams, and detailed descriptions of the dams' components. You argue that the submitted information "identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism."

Based on your arguments and our review of the submitted information, we conclude that the submitted EAP identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the submitted EAP is confidential and must be withheld under section 418.181 of the Government Code in conjunction with 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, toll free, at (888) 672-6787.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/eeg

Ref: ID# 362687

Enc. Submitted documents

c: Requestor  
(w/o enclosures)