



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2010

Ms. Molly Shortall  
Assistant City Attorney  
City of Arlington  
P.O. Box 90231  
Arlington, Texas 76004-3231

OR2010-04398

Dear Ms. Shortall:

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# 373984.

The City of Arlington (the "city") received a request for eleven categories of information pertaining to the Dallas Cowboys organization and two specified events held at the Dallas Cowboys stadium complex (the "complex"). You claim the submitted occupancy, staffing, incident detail, tactical plan, and radio traffic information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.<sup>1</sup>

Initially, we must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code,

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office. Furthermore, to the extent any additional responsive information existed on the date the city received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The city states it received the request for information on January 6, 2010. Accordingly, the city's ten-business-day deadline was January 21, 2010. Although the city's request for a ruling and claim under section 552.101 of the Government Code were timely submitted to this office via facsimile on January 21, 2010, the city did not raise its claim under section 552.108 of the Government Code until January 28, 2010. Consequently, we find the city failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.108 of the Government Code.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert section 552.108 of the Government Code as an exception to disclosure for the submitted information, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the city may not withhold any of the submitted information pursuant to section 552.108 of the Government Code. However, we will consider your timely raised claims under section 552.101 of the Government Code.

Section 552.101 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 (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert the submitted occupancy and radio traffic information is confidential under section 418.181, which provides "[t]hose 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. Additionally, you assert the submitted staffing, incident detail, tactical plan, and radio traffic information is confidential under section 418.176, which protects, among other things, information maintained by a governmental entity for the purpose of responding

to an act of terrorism and relates to the staffing requirements or tactical plan of an emergency response provider. *See id.* § 418.176.

The fact that information may relate to a governmental body's security concerns 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 by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain 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).

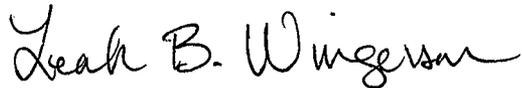
This office has already determined the complex is "critical infrastructure" for purposes of section 418.181. *See* Open Records Letter Nos. 2006-13186 (2006) and 2007-14727 (2007); *see generally* Gov't Code § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). The submitted information consists of specific occupancy numbers for various parts of the complex, which you have marked in Exhibits B and E; emergency response provider staffing requirements, staffing positions, and incident details for previous events held at the complex submitted as Exhibits C, D, and G; and a sample of radio traffic audio recordings containing emergency response provider communications at events held at the complex submitted as Exhibit F. The city has submitted affidavits from an assistant police chief and an assistant fire chief (collectively, the "chiefs"). In their affidavits, the chiefs explain how the staffing requirements and staffing positions are used to determine response strategies for incident mitigation and rescue at future events. After reviewing the chiefs' arguments and the submitted information, we conclude Exhibits D and G, as well as the staffing information we have marked in Exhibit C, must be withheld under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. You have failed to demonstrate, however, how any of the remaining information at issue in Exhibits B, C, E, and F falls within the scope of either section 418.181 or section 418.176 of the Government Code. We, therefore, determine the city may not withhold any part of the remaining information under section 552.101 of the Government code in conjunction with the provisions of the HSA. As you have claimed no other exceptions to disclosure, the remaining information must be released.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 373984

Enc. Submitted documents

c: Requestor  
(w/o enclosures)