



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Ms. Paige Mims
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-05225

Dear Ms. Mims:

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# 374102.

The City of Plano (the "city") received a request for the bid abstract, winning proposal, and awarded contract related to the TX P25 Trunked Radio System. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally you state that the release of this information may implicate the proprietary interests of Motorola, Inc. ("Motorola"). Accordingly, you inform us, and provide documentation showing, that you notified Motorola of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). 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).

In this instance, the submitted information consists of information pertaining to a single public safety communications system for the city and the cities of Allen, Wylie, and Murphy (the "municipalities"). We understand the city to assert that the communications system constitutes critical infrastructure of the city and the municipalities, and that release of the information you have marked would identify vulnerabilities of this critical infrastructure to an act of terrorism. You state that "proper functioning of such mission critical system is vital during any public safety emergency, including a terrorist attack." You further state that release of this information "could expose vulnerabilities of the system" and put citizens at risk. Based on the submitted argument and our review, we conclude the information we have marked is confidential under section 418.181 of the Government Code and must be withheld from disclosure on that basis under section 552.101 of the Government Code. However, we conclude that the city has failed to establish that releasing the remaining information at issue would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Further, we note that some of the radio frequencies contained in the submitted information are available to the public on the Federal Communications Commission's internet website. Accordingly, the remaining information is not subject to section 418.181 of the Government Code and may not be withheld under section 552.101 on that basis. *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).

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from Motorola. We, thus, have no basis for concluding that any portion of the submitted information constitutes the proprietary information of Motorola. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the remaining information based on the proprietary interests of Motorola.

We note that a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code.¹ Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.²

Finally, we note that some the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no further arguments are made against the disclosure of the remaining information, it must be released to the requestor in accordance with copyright law.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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

Sincerely,


Laura Ream Lemus

Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 374102

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Little
Motorola, Inc.
6450 Sequence Drive
San Diego, California 92128
(w/o enclosures)
