



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2011

Ms. Lisa D. Mares
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2011-02713

Dear Ms. Mares:

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# 413385.

The City of Weatherford (the "city"), which you represent, received requests from two requestors for an "[a]nnual list of backflow tests due within the city" and an "[a]nnual list of backflow devices that are due[.]" You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note that the request for an "[a]nnual list of backflow tests" specifies that the list "should be broken down by month" and include mailing and service addresses and certain other detailed information. You indicate the city maintains no other information that would be responsive to the request. We agree the Act does not require the city to release information that did not exist when it received the request or create responsive information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.101. This exception encompasses information other statutes make confidential. You claim 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. Section 418.181 provides as follows:

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 generally 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 pertain to public or private infrastructure does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Moreover, 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 the submitted information is related to the city’s water system and thus pertains to critical infrastructure for the purposes of section 418.181 of the Government Code. You explain the information identifies the locations of backflow devices throughout the city and thus reveals technical details of particular vulnerabilities of the city’s water system. Based on your representations and our review of the information at issue, we find the information is confidential under section 418.181 of the Government Code. We therefore conclude the city must withhold the submitted information on that basis under section 552.101 of the Government Code.²

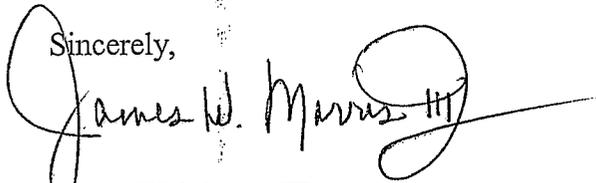
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As we are able to make this determination, we need not address your other arguments against disclosure.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 413385

Enc: Submitted documents

c: Requestors
(w/o enclosures)