



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-12976

Dear Ms. Byles:

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# 429284 (Fort Worth PIR No. W009709-062011).

The City of Fort Worth (the "city") received a request for the physical addresses of all cellular telephone towers in the city. You claim 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.

First, we note the submitted information contains information about city cellular telephone towers other than their physical addresses. This information, which we have marked, is not responsive to the request for information. The city need not release nonresponsive information in response to this request and this ruling will not address such 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. The city raises 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 "[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; *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 responsive information consists of the location of each cellular telephone tower in the city. You state these towers are critical infrastructure and that release of their locations would expose them to an act of terrorism. Specifically, you explain a terrorist could use the submitted addresses to determine where the greatest damage could be done to the city’s cellular telephone tower system, thereby enabling the disruption of critical communications and hindering the ability of law enforcement and emergency services to respond to a terroristic event. However, the Federal Communications Commission makes the physical addresses of cellular telephone towers available to the public on its website. Such address information is also publicly available on other internet websites. You do not explain how the release of such publicly available information would expose the towers to an act of terrorism. Additionally, you have not provided arguments explaining how the responsive physical addresses constitute “technical details of particular vulnerabilities” in the cellular telephone tower system. Accordingly, we conclude you failed to demonstrate the applicability of section 418.181 of the Government Code to the submitted information, and this information may not be withheld under section 552.101 on that basis. *See id.*; 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). As you raise no other exceptions, the responsive 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, 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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 429284

Enc. Submitted documents

c: Requestor
(w/o enclosures)