



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2013

Mr. Robert Schell
Assistant Director of General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2013-01351

Dear Mr. Schell:

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# 476846.

The North Texas Tollway Authority (the "authority") received two requests from the same requestor for the current radio system specifications for the authority's radio network and a copy of the current radio system maintenance contract. You state you will redact insurance policy numbers subject to section 552.136 of the Government Code pursuant to the previous determination in Open Records Letter No. 684 (2009).¹ You state you have released a redacted copy of the submitted information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

Section 552.101 of the Government Code exempts 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, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. 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”). Section 418.182(a) provides:

Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to critical infrastructure or 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 or section 418.182 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 contend the information you have marked reveals the precise locations of the authority’s network of radios and radio-related systems, as well as the precise locations of the radio network’s fiber optic housings within certain electrical rooms in facilities of the authority. You explain the authority’s radio system is used to monitor, manage, and respond to emergency situations. You inform us the authority is under contract with the Texas Department of Public Safety (the “department”) to maintain the radio system in order to dispatch department troopers as well as for use by the department for emergency management preparedness, response, and recovery. Thus, we understand the authority’s radio system constitutes critical infrastructure. You contend public disclosure of the precise locations of the radio equipment and fiber optic cables, as well as the fiber optic network, could jeopardize the security of the radio system’s infrastructure. Based on your representations and our review of the information at issue, we conclude the authority must withhold most of the information you have marked under section 552.101 in conjunction

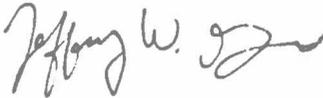
with section 418.181 of the Government Code.² We note the locations of some of the transmission towers you seek to withhold are available to the public on the Federal Communications Commission's Internet website. You do not explain how the release of such publicly available information would expose the radio system to an act of terrorism. *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). Thus, we conclude you have 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. The authority may not withhold this information, which we have marked for release, under section 552.101 in conjunction with section 418.181.

You also claim the locations of the transmission towers are confidential under section 418.182 because they reveal the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. However, you have failed to explain how such publicly available information is confidential under section 418.182. *See Gov't Code § 552.301(e)(1)(A); ORDs 542, 532, 515, 252.* Thus, the authority may not withhold the information you have indicated under section 552.101 in conjunction with section 418.182. The authority must release the remaining information.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

²As our ruling for this information is dispositive, we need not address your arguments against its release.

Ref: ID# 476846

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**