



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2014

Mr. L. Brian Narvaez
Counsel for the City of Eagle Pass
Langley & Banack, Inc.
401 Quarry Street
Eagle Pass, Texas 78852

OR2014-05317

Dear Mr. Narvaez:

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# 520318 (City Open Records Request No. 2014-009).

The City of Eagle Pass (the "city"), which you represent, received a request for construction drawings and FEMA flood plain map for a specified detention pond. The city states it will release the requested map, but claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.110 of the Government Code. The city also states, and provides documentation showing, it notified Tetra Tech, Inc. and a named individual of the city's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

¹We 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.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 confidential certain information related to terrorism. Section 418.181 of the Government Code 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. 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 a 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).

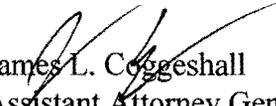
You inform us the submitted information consists of construction plans for a detention pond adjacent to the Eagle Pass Independent School District’s Language Development Center. You assert the detention pond represents a critical function of the city’s flood protection infrastructure. Upon review, we agree the detention pond at issue is critical infrastructure. *See id.* § 421.001(2) (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). You argue release of the submitted information would reveal technical details of particular vulnerabilities of the detention pond that could expose the city to an act of terrorism. Based on your arguments and our review of the submitted information, we find you have demonstrated release of the submitted information would identify the technical details of particular vulnerabilities of the detention pond at issue to an act of terrorism. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 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.

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Caggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 520318

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jaime Kypuros, Jr.
Tetra Tech, Inc.
501 Soledad Street
San Antonio, Texas 78205
(w/o enclosures)