



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2014

Ms. Rebecca Hendricks Brewer
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2014-15334

Dear Ms. Brewer:

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# 535638.

The City of Frisco (the "city"), which you represent, received a request for a copy of the plans for a specified store at a specific location. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the proprietary interests of Honeycomb Engineering, Limited ("Honeycomb"). Accordingly, you have notified Honeycomb of the request and of its right to submit arguments to this office as to why its 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 submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Honeycomb explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude Honeycomb has any protected proprietary interests in the information. *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. Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interests Honeycomb may have in the information.

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 Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with sections 418.181 and 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. 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. Section 418.182 provides in part:

(a) 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 information may generally be related to a governmental body’s security concerns or to a security system does not make the information *per se* confidential under sections 418.181 and 418.182. *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 confidentiality provision, a governmental body asserting sections 418.181 and 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You seek to withhold the submitted floor plans of the specified store under sections 418.181 and 418.182.¹ You assert the strip mall building where the specified store is located is a critical infrastructure and release of the submitted information would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. However,

¹Although you do not cite to section 418.181 of the Government Code in your brief, we understand you to raise this section based on the substance of your argument.

you have not demonstrated the strip mall building is a critical infrastructure for the purposes of section 418.181 of the Government Code. *See id.* § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Consequently, we find the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Additionally, we find you have not demonstrated how the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from terrorism or related criminal activity. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. As no further exceptions are raised, the submitted 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.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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 535638

Enc. Submitted documents

c: Requestor
(w/o enclosures)