



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2015

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-20559

Dear Mr. Pittman:

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# 581782.

The City of Frisco (the "city"), which you represent, received a request for construction documents pertaining to projects at a specified shopping mall, including certain engineering information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the interests of General Growth Properties, Inc. ("GGP"); Gensler Architects; and Post, Buckley, Schuh & Jernigan. Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from GGP. We have considered the submitted arguments and reviewed the submitted 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 section encompasses the Texas Homeland Security Act

(the “HSA”). As part of the HSA, 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 “[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. 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 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 confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls 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 construction plans and related documents for the projects at the specified shopping mall identify key details and locations of critical infrastructure in the city. You state the submitted information “identifies particular vulnerabilities as well as strong and weak points” in the design and operation of the critical infrastructure. You argue the submitted information must remain confidential “to protect and defend [the city’s] citizens and others located near the critical infrastructure.” We agree the shopping mall is critical infrastructure. *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, economy, or morale of the state or the nation”). Based on your representations and our review, we find the city has demonstrated that release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure 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.¹

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/>

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

[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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 581782

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Ji Hwang
Senior Litigation Paralegal
General Growth Properties, Inc.
110 North Wacker Drive
Chicago, Illinois 60606
(w/o enclosures)

Ms. Jill Wheeler
Gensler Architects
5420 LBJ Freeway, Suite 1100
Dallas, Texas 75240
(w/o enclosures)

PBS&J
5444 Summerside Drive, Suite 202
Dallas, Texas 75252
(w/o enclosures)