



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2016

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

OR2016-15360

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# 619539 (Frisco Reference No. G010888-050216).

The City of Frisco (the "city"), which you represent, received a request for specified blueprints. 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 Xuesong Bai, Ph.D, P.E. ("Bai"). Accordingly, you notified Bai of the request for information and of his right to submit arguments to this office stating why the information at issue 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 considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Bai explaining why the submitted information should not be released. Therefore, we have no basis to conclude Bai has a protected proprietary interest in the submitted 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case

information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Bai may have in the 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. Section 552.101 of the Government Code 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 confidential certain information related to terrorism. You assert the submitted information is made confidential by sections 418.181 and 418.182 of the Government Code. 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 relevant 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 that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *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 Texas Homeland Security Act 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 contend the submitted blueprints identify key details and locations of critical infrastructure in the city. *See 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”). You assert 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 aid, protect[,] defend [the city’s] citizens and others located near the critical infrastructure.” However, upon review, we conclude the city has failed to establish any of the submitted information identifies the technical details of particular vulnerabilities

of critical infrastructure to an act of terrorism. Thus, the city may not withhold any of the submitted information 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 the submitted information 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.

We note the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 619539

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)