



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 12, 2016

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

OR2016-15736

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# 617985 (Ref. No. G010734-042216).

The City of Frisco (the "city"), which you represent, received a request for the civil engineering and landscape design drawings for the Cottonwood Creek Greenbelt Park. 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 Studio 13 Design Group, P.L.L.C. ("Studio 13") and Spiars Engineering, Inc. ("Spiars"). Accordingly, you notified these third parties of the request for information and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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 id.* § 552.305(d)(2)(B). As of the date of this letter,

we have not received arguments from Studio 13 or Spiars. Thus, Studio 13 and Spiars have not demonstrated they have any protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests Studio 13 or Spiars 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 seek to withhold the submitted information under section 418.181. You assert the Cottonwood Creek Greenbelt Park is critical infrastructure and release of the submitted information would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. We note portions of the information depict where certain water and sanitary sewer lines are located in the city. You state this information is vital to the city's security operations, which the city must maintain as confidential to protect and defend the city's citizens and others located near the critical infrastructure. Based on these arguments and our review, we agree portions of the information at issue fall within the scope of section 418.181. Accordingly, we have marked the information the city must withhold under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, the city has failed to establish any portion of the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* 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). Additionally, we find the city has failed to demonstrate any of the submitted information 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. Thus, we find the city has not demonstrated the applicability of section 418.181 or section 418.182 to the remaining information, and the city may not withhold it under section 552.101 of the Government Code on either of these basis. As no further exceptions are raised, the remaining 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](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 Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 617985

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)