



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-6953

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207187.

The Houston Emergency Center received a request for a copy of the 2003 Strategic Wireless System Study (the "study") for the City of Houston (the "city"). You indicate that, in accordance with section 1520.5(a) of title 49 of the Code of Federal Regulation, the city has requested a decision from the Transportation Security Administration regarding the portion of the study that pertains to airport security. *See, e.g.,* Open Records Letter No. 2003-8543 (2003) (discussing statutory scheme that requires governmental entities to forward requests for sensitive airport security information to Transportation Security Administration). *See generally English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, this ruling does not address that portion of the study that pertains to airport security. You claim that the remaining portions of the study are excepted from disclosure under section 552.101 of the Government Code in conjunction with provisions of the Texas Homeland Security Act. We have considered the exception you claim and have reviewed the information at issue.

Section 552.101 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 information protected by other statutes. As part of the Texas Homeland

Security Act, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. You assert, among other things, that the requested study is confidential under section 418.181, which provides that “[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.” You assert the following:

The study was commissioned to evaluate the current state of the City’s radio communication systems by identifying particular vulnerabilities and providing recommendations for maintaining or improving the systems to promote more effective and efficient response times in the event of a mass tragedy resulting from terroristic or other related criminal activity. . . . [T]he study contains information about the City’s existing “mission critical” two-way radio systems that would provide the necessary information for a terrorist or other criminal element to disable or sabotage the City’s communication systems. . . . In effect, an attack on the City’s critical communications system would significantly impact the City’s ability to deliver public safety services to the citizens in the event of an act of terrorism or related criminal activity.

Based on your arguments and our review of the submitted information, we conclude that the study identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* Gov’t Code § 421.001 (defining critical infrastructure to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation”). Therefore, the remaining information in the study is confidential under section 418.181 of the Government Code and excepted from release under section 552.101.<sup>1</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>1</sup>Because we are able to resolve this under section 418.181, we do not address your other arguments for exception.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

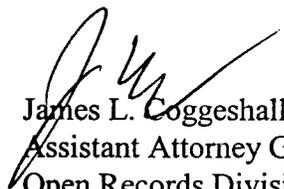
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 207187

Enc. Submitted documents

c: Mr. Brian Sasser  
KPRC-TV  
P.O. Box 2222  
Houston, Texas 77252  
(w/o enclosures)