



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2004

Mr. Jonathan Kaplan  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2004-8478

Dear Mr. Kaplan:

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# 209421.

The City of San Antonio (the "city") received a request for (1) the city's "formally approved business policies and procedures governing the assignment and management of Administrator security privileges" and (2) a list of all city employees with administrator security privileges at the Department Systems Specialist level as of June 30, 2004. You claim that sections 2.0, 3.1.2, 3.15, and 9.1 of the submitted data security plan and the submitted list of city employees are excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code.<sup>1</sup> You also provide documentation showing that you have notified Deloitte Consulting ("Deloitte") and Hansen Information Technology, Inc. ("Hansen") of the city's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered the exceptions you claim and reviewed the submitted information. We have also considered

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<sup>1</sup>You advise us that the remaining information in the submitted data security plan is not responsive to the present request. Accordingly, this ruling does not address the public availability of the remaining portion of the submitted plan.

comments submitted by the requestor. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b).

You asserted section 552.139 within the deadlines of section 552.301; however, you did not raise section 552.101 or section 552.108 of the Government Code within the ten-business-day deadline prescribed by section 552.301(b). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the city has waived its claim under section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108. Although you also failed to timely assert section 552.101, a governmental body may not waive the protection of section 552.101 for information made confidential by law. *See* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, we will consider your arguments under sections 552.101 and 552.139 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the Texas Homeland Security Act, which includes sections 418.176, 418.179, 418.181, and 418.182 of the Government Code. We note that, although information may relate to a governmental body's security concerns, this 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).

You assert that the information at issue is confidential under section 418.176 of the Government Code. Section 418.176(a) provides the following:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a). Although the city raises section 418.176, you did not submit any arguments to this office explaining the applicability of that section to the information at issue. *See id.* § 552.301(e)(1)(A); Open Records Decision Nos. 542 (1990) (governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988). Therefore, the submitted information is not confidential under section 418.176 of the Government Code, and you may not withhold it from release under section 552.101 on that basis.

You also assert that the information at issue is confidential under section 418.179 of the Government Code. Section 418.179(a) provides that information is confidential if it

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to the details of the encryption codes or security keys for a public communications system.

Gov't Code § 418.179(a). You inform us that the requested information consists of (1) a list of names of city personnel who have Department Systems Specialists status ("DDS employees") and (2) the provisions of the city's data security plan that are generally relevant to the assignment and management of security privileges in the city's computer system.

You state that the computer system "is normally used for routine activity" of the city, and you explain to us that the DDS employees have certain administrative access to city computers. Thus, we understand that the DDS employees serve administrative duties not related to terrorism or law enforcement. We also note that the requested sections of the data security plan contain only general information about the city's computer system. Accordingly, based on your representations and our review of the information at issue, we find that you have not

demonstrated that the requested list of DDS employees or sections of the data security plan were collected, assembled, or maintained by or for the city to prevent, detect, or investigate an act of terrorism or related criminal activity. *See id.* § 418.179(a)(1).

In addition, the requested sections of the data security plan do not contain the encryption codes or security keys of the city's computer system, and you have not demonstrated how these sections or the names of DDS employees are otherwise related to the computer system's encryption codes or security keys for purposes of section 418.179. *See id.* § 418.179(a)(2). Therefore, we conclude that the information at issue is not confidential under section 418.179 of the Government Code, and it may not be withheld under section 552.101 on that basis.

You also assert that the information at issue is confidential under section 418.181 of the Government Code. Section 418.181 provides the following:

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. You assert that the computer system is an essential component of the government's assets and that the "[c]ompromise of this system puts this essential component of the emergency response infrastructure at risk."

We agree that the city's computer system is "critical infrastructure" for purposes of section 418.181. However, as discussed above, the requested portions of the data security plan contain only general information about the city's computer system. You have not explained, nor can we discern, how release of this general information in the plan or the names of employees with DDS status would identify the technical details of any vulnerability of the computer system to an act of terrorism. *See id.* § 418.181. Therefore, this information is not confidential under section 418.181 of the Government Code and may not be withheld under section 552.101 on that basis.

You also assert that the information at issue is confidential under section 418.182 of the Government Code. Section 418.182(a) provides the following:

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). As discussed above, the requested sections of the data security plan contain only general information about the city's computer system. After reviewing your arguments

and the information at issue, we find that the plan does not reveal, and you have not demonstrated how it otherwise relates to, the specifications, operating procedures, or location of a security system of the city's computer system. *See id.* In addition, we note that one of the goals of the plan is to protect data in the city's computer system from accidental loss. Thus, we find you have not established that the requested sections of the data security plan relate to a security system used to protect public or private property from an act of terrorism or related criminal activity. *See id.* Therefore, we conclude that the information at issue is not confidential under section 418.182 of the Government Code and may not be withheld under section 552.101 on that basis.

Finally, you assert that some of the submitted information is excepted under section 552.139 of the Government Code.<sup>2</sup> Section 552.139 provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

*Id.* § 552.139. Although the city raises section 552.139, you did not submit any arguments to this office explaining the applicability of that section to the information at issue. *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). Furthermore, after reviewing the information at issue, we cannot determine how, for purposes of section 552.139(a), the specified portions of the plan relate to computer network security or to the design, operation, or defense of a computer network. Moreover, this information is not a computer network vulnerability report or an assessment of the vulnerability of the city's computer system to unauthorized access or harm. Therefore, the city may not withhold the information at issue under section 552.139.

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<sup>2</sup>Although you assert section 552.136 of the Government Code for the information related to security issues for computers, we note that the 78th Legislature renumbered that provision as section 552.139. *See* Act of May 21, 2003, 78th Leg., R.S., ch. 1275, § 2(76), 2003 Tex. Sess. Law Serv. 4144

Finally, we note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Deloitte nor Hansen has submitted to this office any reasons explaining why the requested information relating to them should not be released; therefore, this office has no basis for concluding that Deloitte or Hansen has a proprietary interest in this information. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that you may not withhold any portion of the submitted information relating to Deloitte or Hansen on the basis of their proprietary interests in the information. As you claim no other exception to the disclosure of the information at issue, it must be released.

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 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).

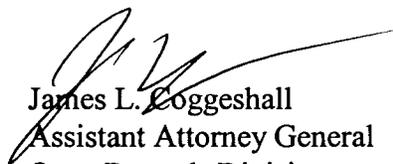
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

  
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Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 209421

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