



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2005

Ms. Moira Parro Schilke
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2005-08841

Dear Ms. Schilke:

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# 233276.

Dallas County (the "county") received a request for all documentation regarding 2004 Urban Area Security Initiative ("UASI") funds and proposals to expend 2004 UASI funds from March 1, 2003 to the present. You state that some information has been made available to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. The Texas Homeland Security Act makes certain information related to terrorism confidential. *See* Gov't Code §§ 418.176 - .182. You assert that the submitted information is confidential under sections 418.176, 418.177, and 418.181 of the Government Code. Section 418.176 provides as follows:

(a) 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; [or]

(2) relates to a tactical plan of the provider[.]

Section 418.177 provides:

Information is confidential if the information:

(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 an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

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.

Gov't Code §§ 418.176, .177, .181. 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).

We note that the submitted information consists primarily of documentation related to the county's expenditure of UASI grant funds. Upon review of the submitted information and your arguments, we find that you have not demonstrated that any of the submitted information is made confidential under these provisions of the Texas Homeland Security Act. *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). While some documents reflect statistical information about emergency response teams, you have failed to establish that any of this submitted information relates to an

emergency response provider's staffing requirements or tactical plan. *See* Gov't Code § 418.176. Therefore, no portion of the submitted information may be withheld as confidential under section 418.176. Furthermore, we note that none of the submitted information constitutes or reveals the contents of a vulnerability assessment for purposes of section 418.177. *See* Gov't Code § 418.177. Accordingly, we conclude that the submitted information is not confidential under section 418.177. We also find that the county does not adequately explain or identify, and none of the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism for purposes of section 418.181. *See* Gov't Code § 418.181. We therefore determine that the county may not withhold any of the submitted information under section 552.101 in conjunction with any of the provisions of the Texas Homeland Security Act. As you raise no other exceptions to disclosure, the county must release the submitted information to the requestor.

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).

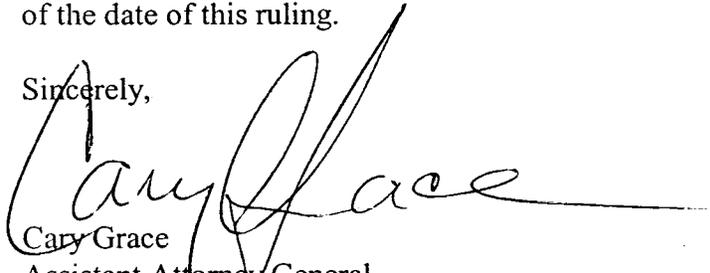
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/sdk

Ref: ID# 233276

Enc. Submitted documents

c: Mr. Joe Ellis
Fox 4 News
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Dallas, Texas 75202
(w/o enclosures)