



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2007

Ms. Rebecca H. Brewer
Abernathy Roeder Boyd Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2007-02869

Dear Ms. Brewer:

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# 273596.

The City of Frisco (the "city"), which you represent, received a request for a proposal submitted by Ruiz Protective Services, Inc. ("Ruiz") for a contract for unarmed security services. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also believe that the request for information implicates the proprietary interests of Ruiz. You notified Ruiz of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception you claim and have reviewed the information you submitted.

We first note that the submitted documents include a resolution adopted by the city council. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolution is analogous to an ordinance and must be released.

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Next, we address the city's claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and protects information that other statutes make confidential. Gov't Code § 552.101. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code by the Seventy-eighth Legislature. Section 418.182(a) states as follows:

(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 section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Likewise, 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).

Although the city raises section 418.182(a), this section protects information relating to a security system, such as an alarm or security camera system, located on the premises of public or private property. In this instance, you have not submitted any arguments explaining how the submitted information, which relates to the provision of unarmed security guard services, is protected under section 418.182. Therefore, section 418.182 is not applicable to the submitted information, and the city may not withhold any of the information on that basis under section 552.101 of the Government Code.

We also understand the city to raise 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." *Id.* § 418.181. You contend that the submitted information identifies technical details of certain key public facilities. Based on your representations and our review of the submitted information, we have marked information that the city must withhold under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We next note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have

received no correspondence from Ruiz. Thus, Ruiz has not demonstrated that any of the submitted information is either confidential or proprietary for the purposes of the Act. *See id.* §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the city may not withhold any of the remaining information on the basis of any interest that Ruiz may claim in that information.

We note, however, that section 552.136 of the Government Code is applicable to some of the remaining information.² Section 552.136 states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). We have marked insurance policy numbers that the city must withhold under section 552.136 of the Government Code.

We also note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; and (2) the marked insurance policy numbers must be withheld under section 552.136 of the Government Code. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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).

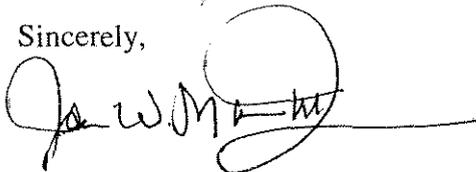
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large, circular flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 273596

Enc: Submitted documents

c: Mr. Dakota T. Patterson
Dakota Risk Group, Inc.
P.O. Box 210901
Bedford, Texas 76095
(w/o enclosures)

Mr. Rob Minnis
Ruiz Protective Services, Inc.
10939 Shady Trail Suite A
Dallas, Texas 75220
(w/o enclosures)