



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2007

Ms. Paige Mims
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2007-09109

Dear Ms. Mims:

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# 283435.

The City of Plano (the "city") received a request for federal building plans, including floor plans, plot plan, building permit and the project data sheet. You claim that the requested 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 of the Government Code 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, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that the submitted information is confidential under section 418.181 of the Government Code, which 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; *see also id.* § 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"). 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).

In this instance, you provide this office with Public Building Service Order 3490.1 ("the PBS order") issued by the General Services Administration to support your assertion that the submitted documents are confidential under section 418.181. You represent to this office that certain types of sensitive but unclassified documents must be withheld in order to reduce exposure to possible attacks or threats to the building at issue in the request. The particular types of documents you assert as being sensitive but unclassified are those that disclose building design, floorplans, and the locations of secure functions, utilities, and security systems. We note that some of the submitted documents are precisely the types of information that you assert should be protected. However, the remaining documents are not described in the PBS order, nor have you submitted any additional arguments explaining why the remaining documents are confidential under section 418.181. Upon review of the submitted information and of your arguments taken from the PBS order, we find that release of some of the submitted information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The city has not met its burden of explaining how the remaining information falls within the scope of section 418.181. The remaining information 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).

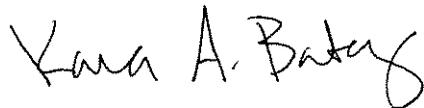
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 283435

Enc. Submitted documents

c: Mr. Lonnie Lee
Collin County Appraisal District
250 Eldorado Parkway
McKinney, Texas 75069
(w/o enclosures)