



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2007

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2007-15896

Dear Ms. Shortall:

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# 296188.

The City of Arlington (the "city") received a request for six categories of information related to the development and drainage plans of the Dallas Cowboys Complex (the "complex"). You state that some of the requested information will be provided to the requestor.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.² Additionally, you state that the release of the requested drawings and plans may implicate the proprietary interests of certain third parties. Pursuant to section 552.305 of the Government Code, you notified a representative of the Dallas Cowboys, Graham Associates, Inc., and HKS, Inc. of the request and of their opportunity to submit comments to this office. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹You have submitted an index indicating those documents for which the city does and does not claim an exception to disclosure. Since those records for which you do not claim an exception were not submitted for our review, we presume that the city has made those records available to the requestor. *See Gov't Code §§ 552.006, .221*; Open Records Decision No. 664 (2000).

²Although you also raise section 552.108 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we will not address this exception. *Gov't Code § 552.301, .302.*

explain applicability of exception to disclosure in certain circumstances). We have considered your arguments and have reviewed the submitted sample drawings.³ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the city failed to meet its procedural obligations under the Act. Specifically, the requestor asserts that her office made a prior request for the information at issue on July 23, 2007, and that the city failed to either provide the requested information or submit the request to this office for a decision within the required ten business days. *See* Gov't Code § 552.301(b) (a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request). Pursuant to section 552.301(d), a governmental body must also provide the requestor, within ten business days of receiving the written request, a written statement that it has asked for an attorney general decision. *Id.* § 552.301(d). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App. — Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). It appears from the submitted information that the city viewed the September 14, 2007 request as a new request for information. In this instance, it is not necessary for this office to determine whether a procedural violation occurred because the city raises section 552.101 of the Government Code as an exception to disclosure for the information at issue. Section 552.101 is a mandatory exception that generally cannot be waived by a procedural defect. *See* Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Accordingly, we will address the city's arguments under this section.

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 (the "HSA"), 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, which provides that "[t]hose documents or portions of documents in

³We assume that the sample records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

The fact that information may relate to the security concerns of a governmental body or a private entity does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). A governmental body or third party asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of those provisions. *See generally* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

This office has already determined that the complex is “critical infrastructure” for purposes of section 418.181. *See* Open Records Letter Nos. 2006-13186 (2006) and 2007-14727 (2007); *see generally* Gov’t Code § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Some of the records at issue consist of technical drawings that detail the engineering schematics for construction of an underground municipal structure, storm sewers, and of plumbing plans for the complex. The city has submitted affidavits from the deputy fire marshal and the lieutenant of police (the “city officials”). In their affidavits, the city officials explain how these drawings reveal the vulnerabilities of the complex and how a would-be terrorist could use such information to his advantage. After reviewing the city officials’ arguments and the submitted drawings, we conclude that some of the submitted information, which we have marked, must be withheld under section 552.101 in conjunction with section 418.181 of the Government Code. With respect to the remaining submitted information, which consists of blueprints of the complex’s sprinkler system and lavatories, we find you have failed to explain, nor can we discern from your arguments, how any of this information falls within the scope of section 418.181(a) of the Government Code. We therefore determine that the city may not withhold the blueprints of the complex’s sprinkler system and lavatories under section 552.101 in conjunction with the provisions of the HSA.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body’s notice under section 552.305(d) of the Government Code 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 none of the notified third parties have submitted comments to this office explaining why the blueprints of the complex’s sprinkler system and lavatories should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to the Dallas Cowboys, Graham Associates, Inc., and HKS, Inc. would implicate their proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual

evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the city may not withhold any portion of the submitted information based on the proprietary interests of these companies.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with the HSA. As you raise no other arguments against disclosure, 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

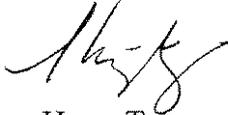
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 296188

Enc. Submitted documents

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