



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2008

Mr. Kerry V. O'Brien  
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OR2008-07127

Dear Mr. O'Brien:

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# 309698.

The City of Somerville (the "city"), which you represent, received a request for all documents pertaining to the city's public water system. 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.<sup>1</sup>

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 exception encompasses information that other statutes make confidential. 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 Exhibits B through K and certain maps and diagrams are 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. The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under the Texas Homeland

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<sup>1</sup>We assume that the representative sample of records submitted to this office is 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.

Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under the Texas Homeland Security Act must be accompanied by an adequate explanation of 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).

The requested documents relate to the city's public water system. You assert and we agree that the city's water system is part of the city's critical infrastructure for purposes of section 418.181. *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). You argue that the maps and diagrams of the water tower, the water treatment plant and onsite storage facility, and the distribution lines for the water fall within the scope of section 418.181 of the Government Code. You have provided an affidavit from the custodian of records for the city's Public Works Department explaining how these maps show intricate details of the city's water system. Specifically, these details include "pipe sizes and locations, the height and width of structures, the amount of water pumped by the structure, the type of pumps used and diagrams of the pumps as well as the location of the facilities." Additionally, the maps detail "the location and size of the water distribution lines coming into and traveling throughout the city," the layout of chemical rooms, and the location of certain chemicals that are added to the water. You argue that these maps demonstrate intricate details and vulnerabilities of the city's water system infrastructure. After reviewing the custodian's affidavit, we conclude that the city has adequately explained how these maps fall within the scope of section 418.181 of the Government Code. Therefore, the maps must be withheld from disclosure under section 552.101 of the Government Code.

Next, you argue that Exhibits B, E, F, G, and I, which relate to testing of the city's water supply, fall within the scope of section 418.181 of the Government Code. You assert that these exhibits reveal "a specific pattern of frequency for testing the city's water supply." The documents, however, only contain random dates and times that testing was performed. We cannot discern any pattern from our review nor have you explained how a pattern can be discerned from this information. Accordingly, you have failed to demonstrate how the release of these exhibits would expose particular vulnerabilities of the city's public water system to an act of terrorism. Therefore, Exhibits B, E, F, G, and I are not confidential under section 418.181.

Next, you seek to withhold Exhibit C under section 418.181. You state that Exhibit C reveals "specific details on the location of water mains, wells, and the city's treatment plant, as well as the chemical content of the water supply and procedures for treating water from the city's wells." However, none of the letters or ancillary documents in Exhibit C detail the location of water mains or wells. Exhibit C merely contains a series of correspondence exchanged between the city and the Texas Water Commission in 1993. These documents detail the city's noncompliance with certain rules and regulations of the Texas Water

Commission. You provide no additional arguments explaining how this information would expose particular vulnerabilities of the city's public water system to an act of terrorism. Therefore, we find that the city has not demonstrated how Exhibit C falls under section 418.181.

Next, you argue that Exhibits D and H, which consists of a dead-end flushing log and a map of fire plugs and a water sampling site, fall within the scope of section 418.181 of the Government Code. You argue that the release of these exhibits would expose "points of entry into the water supply (and by inference, the location of mains)." However, these exhibits detail only the general location of fire hydrants which are located in visible areas around the city. You provide no additional arguments explaining how the release of these exhibits would expose particular vulnerabilities of the city's public water system to an act of terrorism. Therefore, we find that the city has not demonstrated how Exhibits D and H fall under section 418.181.

Finally, you argue that Exhibits J and K, which consist of a 1954 report from a well drilling company and a 1991 survey of land owned by the city, fall within the scope of section 418.181 of the Government Code. You explain that the information in Exhibit J reveals the "process of drilling, the geological composition at the drill site[,] and extraneous chemicals found in the water at the site[.]" We agree that Exhibit J reveals this information. However, you do not explain nor can we discern how geological composition, water composition, or drilling methods from a report that is over fifty years old could be used to expose particular vulnerabilities of the city's public water system to an act of terrorism. You state that Exhibit K reveals the location of a well. However you do not provide us with any explanation of how this information necessarily would expose particular vulnerabilities of the city's public water system to an act of terrorism. Therefore, we find that the city has not demonstrated how Exhibits J and K fall under section 418.181. Accordingly, as the city raises no other exceptions to disclosure of Exhibits B through K, this information must be released to the requestor.

In summary, the maps and diagrams of the water tower, the water treatment plant and onsite storage facility, and the distribution lines for the water must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Exhibits B through K must be released 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 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 309698

Enc. Submitted documents

c: Ms. Latrice Hertzler  
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(w/o enclosures)