



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2008

Ms. Kay Molina  
Texas Facilities Commission  
1711 San Jacinto Boulevard  
Austin, Texas 78701

OR2008-12274

Dear Ms. Molina:

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# 321048.

The Texas Facilities Commission (the "commission") received two requests from different requestors for information pertaining to the condition, status, or maintenance of a security alarm system at the Governor's Mansion. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you have submitted.

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 other statutes make confidential. As part of the Texas Homeland Security Act ("HSA"), the Seventy-eighth Legislature passed House Bill 9, which added sections 418.176 through 418.182 to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.182 of the Government Code provides 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

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<sup>1</sup>Although you also originally raised section 552.108, you withdrew your claim under section 552.108 because the Department of Public Safety notified the commission there was no law enforcement interest in the responsive information.

system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

(c) Information in the possession of a governmental entity that relates to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by Section 61.003, Education Code, is public information and is not excepted from required disclosure under Chapter 552 unless the security camera:

(1) is located in an individual personal residence for which the state provides security; or

(2) is in use for surveillance in an active criminal investigation.

*Id.* § 418.182. The fact that information may be related to a governmental body's security concerns does not make such 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). 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 HSA 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).

You contend portions of the submitted information are confidential under section 418.182. You have marked information in the responsive documents that you state identifies the specifications and operating procedures of the security system at the Governor's Mansion, including the type of system, type of monitor, procedures concerning malfunctions, and issues that could lead to the malfunction of the system. You also state a portion of the information you have marked relates to the location of the system. Having considered your arguments and reviewed the submitted information, we agree some of the information you have marked identifies the specifications, operating procedures, and location of a security system at the Governor's Mansion. Thus, the commission must withhold the information we have marked under section 552.101 in conjunction with section 418.182 of the Government Code. However, the remaining information you have marked consists of general technical information. You have not demonstrated how this general technical information identifies specifications, operating procedures, or the location of a security system at the Governor's Mansion. Therefore, the commission may not withhold any portion of the remaining information you have marked under section 552.101 in conjunction with section 418.182 of the Government Code.

Next, we address your contention that a portion of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

*Id.* § 552.130(a). Accordingly, the commission must withhold the Texas motor vehicle record information you have marked under section 552.130.

You assert section 552.136 of the Government Code is applicable to the customer number you have marked in the remaining information. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, 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. You state the marked customer number constitutes an access device number. However, you do not explain, nor can we discern, how the customer number can be used to access "money, goods, services, or any thing of value." *Id.* Thus, we conclude you have failed to demonstrate the customer number is an access device number for the purposes of section 552.136. Therefore, the commission may not withhold the marked customer number under section 552.136.

In summary, the commission must withhold the information we have marked under section 552.101 in conjunction with section 418.182 of the Government Code. The commission must withhold the Texas motor vehicle record information it has marked under section 552.130. 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). If the governmental body does not file suit over 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

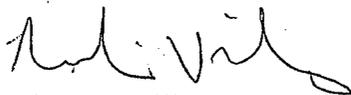
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 321048

Enc. Submitted documents

c: Ms. April Castro  
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c/o Texas Facilities Commission  
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(w/o enclosures)

Ms. Annalisa Petralia  
CBS 42 News  
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