



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2009

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2009-07024

Dear Mr. Toscano:

~~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# 343856.~~

The City of Dallas (the "city") received a request for the Wireless Communications Vulnerability Assessment Study prepared for the city by RCC Consultants, Inc. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

~~Initially, we must address the city's responsibilities under the Act. Section 552.301(e) of the Government Code requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. See Gov't Code § 552.301 (e)(1)(A)-(D). You state that the current request was received by the city on March 5, 2009. However, you did not submit a copy of the specific information requested or representative samples until March 27, 2009. See *id.* § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find that the city failed to comply with the procedural requirements of section 552.301 of the Government Code.~~

Pursuant to section 552.302 of the Government Code, 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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No.150 (1977). Section 552.108 is a discretionary exception and, as such, does not generally provide a compelling reason to withhold information. See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Consequently, the city may not withhold any of the submitted information under section 552.108. However, because sections 552.101 and 552.139 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under these exceptions.

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. You raise section 552.101 in conjunction with sections 418.177 and 418.181 of the Government Code, part of the Texas Homeland Security Act (the “HSA”). Section 418.177 provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov’t Code § 418.177; see generally *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 measures 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). 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 HSA 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).

You state that the submitted information “is an assessment of the strengths and weaknesses of the city’s wireless communications systems.” You explain that these systems “are a critical part of the city’s infrastructure and that these systems provide functions vital to the

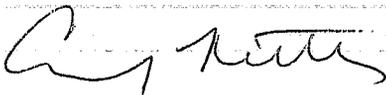
security, public health, and safety of the city.” You further explain that “these systems are used to coordinate emergency and disaster response in the city.” You also state that the submitted information “details particular vulnerabilities of the city’s systems to acts of terrorism.” You assert that “release of this information would render the city vulnerable to attack because the [a]ssessment contains information about how the city’s wireless communications systems operate.”

Based on your representations and our review of the submitted information, we find that the submitted information relates to the city’s assessment of its risk or vulnerability to an act of terrorism or related criminal activity and therefore is confidential under section 418.177 of the Government Code. Accordingly, the city must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 343856

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining claim.