



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 13, 2010

Ms. Shirley Thomas  
Senior Assistant General Counsel  
Dallas Area rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2010-06850

Dear Ms. Thomas:

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# 379298 (DART ORR 7234).

Dallas Area Rapid Transit ("DART") received a request for letters, memoranda, or e-mails between DART and the Corps of Engineers (the "Corps"), any communication in writing, electronic, or print concerning the Corps' review of the Orange Line works between DART and any member city representative, and any communication in writing, electronic, or print concerning the Corps' review of the Orange Line works between DART employees or agents from September 1, 2009 until February 25, 2010. You state you have released a portion of the requested information. You also state that you do not have information responsive to a portion of the request.<sup>1</sup> You claim that the submitted 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.

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Section 552.101 of the Government Code exempts 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 section 418.181 of the Government Code, a provision of the Texas Homeland Security Act. Section 418.181 provides "[t]hose 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 or emergency management activities 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).

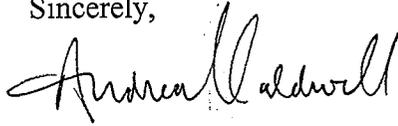
You inform us that DART is a critical transportation infrastructure with thousands of riders. You state that a disturbance or sabotage of this infrastructure could lead to derailment which could result in hundreds of injuries or deaths. You further state the submitted information consists of "geotechnical reports, analysis of the structural soundness and designs of the DART Light Rail bridge structure that crosses the Trinity River and levees." You contend that this information identifies technical details of the vulnerabilities of DART's Light Rail bridge structure. Based on your representations and our review, we agree the requested information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the requested information must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 379298

Enc. Submitted documents

c: Requestor  
(w/o enclosures)