



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-09383A

Dear Ms. Chang:

This office issued Open Records Letter No. 2010-09383 (2010) on June 25, 2010. We have examined this ruling and determined that it needs clarification. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on June 25, 2010. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). Your request was assigned ID# 392361.

The City of Houston Public Works and Engineering Department (the "department") received a request for a list of registered Backflow Prevention Devices in its database, including serial number, device type, last test date, and service address. You claim 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.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request and this ruling will not address that information.

You indicate portions of the responsive information were the subject of Open Records Letter Ruling Nos. 2005-06206 (2005) and 2005-06244 (2005). We have no indication the law, facts, and circumstances have changed since the issuance of Open Records Letter Nos. 2005-06206 and 2005-06244. Thus, with regard to the identical responsive information

¹We 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.

that was previously requested and ruled on by this office, we conclude the department must rely on the prior rulings as previous determinations and withhold or release the identical information in accordance with those decisions. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the responsive information is not encompassed by any previous ruling, we will consider your submitted arguments.

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, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 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 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 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 section 418.181 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).

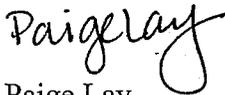
You inform us that the department’s Water Production Branch “advises that backflow preventers are devices that are required by [c]ity and state regulation for locations that use large quantities of water and have chemicals and or contaminants that have the potential for reverse entry into the [c]ity’s potable water distribution system.” You argue that section 418.181 is applicable because the information at issue “identifies the physical location, inspection information, and technical details of the backflow preventer[s]” and “would enable any person seeking to inject contaminants into the [c]ity’s water supply.” The department further states that “the model, make, and serial number of backflow preventers can be used to obtain drawings of the devices online or by catalogue [and] this information would enable someone to inject contaminants into the [water supply].” After reviewing your arguments and reviewing the information at issue, we conclude you have adequately explained how portions of the submitted information fall within the scope of section 418.181 of the Government Code. *See generally* Gov’t Code § 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"). Therefore, the department must withhold the physical location, model, make, and serial number of the backflow preventers under section 552.101 of the Government Code. The remaining responsive information must be released.

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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 392361

cc: Requestor
(w/o enclosures)