



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2011

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
For Town of Flower Mound
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-00749

Dear Mr. Griffith:

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# 405994.

The Town of Flower Mound (the "town"), which you represent, received a request for the "Flower Mound Public Library Emergency Management Plan." 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 418.181 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). 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; *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 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 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).

We understand that the library constitutes critical infrastructure. You assert that the information at issue identifies the technical details of particular vulnerabilities of this critical infrastructure to an act of terrorism. *See id.* § 421.001. In particular, you assert that the submitted documents "identify details of the [t]own's Emergency Preparedness Plan system which could be used by terrorists to disrupt governmental functions or affect public health."

Upon review of your arguments and the information at issue, we agree the town has demonstrated that release of some of the submitted information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the town must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find you have failed to establish that release of the remaining information would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, you have not demonstrated that any of the remaining information is confidential under section 418.181 of the Government Code and the town may not withhold it under section 552.101 on that basis. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980).

We note that some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The town may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Some of the remaining information consists of an emergency contact list containing employee telephone numbers. Provided that the individual whose information is at issue timely elected to keep personal information confidential, the town must withhold the employee's home telephone number under section 552.117(a)(1) of the Government Code. Otherwise, this information may not be withheld under section 552.117.

In summary, the town must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. Provided that the individual whose information is at issue timely elected to keep personal information confidential, the town must withhold the employee's home telephone number under section 552.117(a)(1) of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 405994

Enc. Submitted documents

c: Requestor
(w/o enclosures)