ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 14, 2011

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-13220

Dear Ms. Brewer:

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# 431402 (PIR 2011-0618, 2011-0619).

The City of Frisco (the "city"), which you represent, received two requests from the same requestor for the "as builts" for the Lone Star Ranch and FM 423 lift stations. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 ("HSA"), 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 of the Government Code 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. The fact that information may relate to a governmental body's security concerns 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 by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of the 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 state the submitted information, consisting of the engineering plans showing the technical details of the two lift stations, would identify particular vulnerabilities of critical infrastructure. You further argue "the security of [this] key public facility . . . is intended to protect employees, citizens of Frisco, as well as visitors/patrons visiting this [facility from] acts of terrorism and/or criminal acts related to terrorism." We agree the city's lift stations are critical infrastructure. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Further, upon review of your arguments and the information at issue, we conclude the city has adequately explained how the submitted information falls within the scope of section 418.181 of the Government Code. Therefore, the submitted engineering plans must be withheld from disclosure under section 552.101 of the Government Code on that basis.[1]

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# 431402

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[1]As our ruling is dispositive, we need not address your remaining argument against disclosure.