



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2011

Mr. Robert Schell  
Assistant Director General Counsel  
North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026

OR2011-14754

Dear Mr. Schell:

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# 432731.

The North Texas Tollway Authority (the "authority") received two requests for information pertaining to specified contracts. The first requestor seeks contracts between the authority, Wai-Wize, and ABI, as well as any work product generated by these companies. The second requestor seeks contracts between the authority and Wai-Wize, any reports presented to the authority by Wai-Wize, and how much money the authority has received by Wai-Wize as a result of direct contracts and minority-owned business enterprise programs. You state you have released a redacted copy of the submitted information to the requestor. You claim portions of the submitted information are 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.

Initially, we note you have only submitted an assessment completed by Wai-Wize for our review that is responsive to the portion of the first request that seeks work product produced by Wai-Wize and the portion of the second request that seeks reports presented by Wai-Wize to the authority. Thus, to the extent information responsive to the remaining portions of these requests existed when the requests were received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The authority received the first request on July 25, 2011; thus, the authority's fifteen-business-day deadline was August, 15, 2011. However, we did not receive the responsive information until August 25, 2011. We note the envelope in which you sent the responsive information reflects it was initially rejected by the post office and then mailed again on August 25, 2011, as evidenced by the postmark on the envelope. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* Therefore, we conclude the authority failed to establish that it complied with the procedural requirements mandated by section 552.301.

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* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). 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). Sections 552.101 and 552.139 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will address your arguments under these sections.

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; *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”). Section 418.182(a) provides:

Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may relate to critical infrastructure or 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 or section 418.182 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 contend the information you have marked reveals the precise locations of the authority’s network of radios and radio-related systems, as well as the precise locations of the radio network’s fiber optic housings within certain electrical rooms in facilities of the authority. You explain the authority’s radio system is used to monitor, manage, and respond to emergency situations. You inform us the authority is under contract with the Texas Department of Public Safety (the “department”) to maintain the radio system in order to dispatch department troopers as well as for use by the department for emergency management preparedness, response, and recovery. Thus, we understand the authority’s radio system constitutes critical infrastructure. You contend public disclosure of the precise locations of the radio equipment and fiber optic cables, as well as the fiber optic network, could jeopardize the security of the radio system’s infrastructure. Based on your representations and our review of the information at issue, we conclude the authority must withhold most of the information you have marked under section 552.101 in conjunction with section 418.181.<sup>1</sup> We note the locations of some of the transmission towers you seek to withhold are available to the public on the Federal Communications Commission’s internet website. You do not explain how the release of such publicly available information

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your arguments against its release.

would expose the radio system to an act of terrorism. *See id.*; 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). Thus, we conclude you have failed to establish that releasing the remaining information at issue would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. We have indicated this information in the submitted compact disc and the authority may not withhold it under section 552.101 in conjunction with section 418.181.

You also claim the locations of the transmission towers are confidential under section 418.182 because they reveal the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. However, you have failed to explain how the release of the information that is made publicly available would protect the radio system from an act of terrorism or related criminal activity. *See Gov't Code* § 552.301(e)(1)(A); Open Records Decision Nos. 542, 532, 515, 252. Thus, the authority may not withhold the information we have indicated under section 552.101 in conjunction with section 418.182.

Next, we address your assertion the information at issue is excepted under section 552.139 of the Government Code. Section 552.139 provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Gov't Code § 552.139. Upon review, we find you have not demonstrated that any of the information at issue relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Furthermore, you have not demonstrated this information consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, the information we have indicated may not be withheld under section 552.139.

In summary, except for the information we have indicated on the compact disc, the authority must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The remaining 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 432731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)