



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2011

Mr. Marvin J. Angle
For City of Jacksonville
The Norman Law Firm
P.O. Box 1870
Jacksonville, Texas 75766

OR2011-17839

Dear Mr. Angle:

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# 440661.

The City of Jacksonville (the "city"), which you represent, received a request for the city's emergency action plan ("EAP"). You claim the submitted information is excepted from disclosure pursuant to 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with sections 418.176 through 418.182 of the Government Code. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.176 provides, in relevant part:

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Id. § 418.176. 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 generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain Buckner Dam forms Lake Jacksonville, a vital source of water for the city and surrounding areas. You have submitted an affidavit from the Police Chief of the Jacksonville Police Department, who argues release of the submitted information would “disclose to terrorists or criminal elements the manner and method by which the [city] would respond to various emergencies.” You also assert the submitted EAP “identifies the technical details of the condition of Buckner Dam.” You further assert release of the submitted information “would subject this dam to vulnerability to an act of terrorism.” We conclude the submitted EAP relates to staffing requirements and tactical plans of emergency response providers maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. We find the EAP also identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the submitted EAP is confidential pursuant to sections 418.176 and 418.181 of the Government Code and the city must withhold it under section 552.101 of the Government Code.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.

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

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,

A handwritten signature in cursive script that reads "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 440661

Enc. Submitted documents

c: Requestor
(w/o enclosures)