



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2012

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

OR2012-00217

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# 443014.

The City of Jacksonville (the "city"), which you represent, received a request for the report generated by Adams Engineering ("Adams") for the Buckner Dam evaluation and a copy of the invoice paid for the preparation of the Emergency Action Plan for the Buckner Dam. You claim the submitted 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.

Initially, we note you did not submit the requested invoice for our review. We assume to the extent information responsive to this portion of the request existed when the city received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 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).

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 that is made confidential by other statutes. You raise section 552.101 in conjunction with provisions of the Texas Homeland

Security Act (the "HSA"), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. Section 418.181 provides as follows:

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 generally 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 information may be related to a governmental body's critical infrastructure or security concerns does not make such 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 a 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, and we agree, Buckner Dam constitutes critical infrastructure for purposes of the HSA. *See generally id.* § 421.001. You assert the Adams report and the Apex Geoscience, Inc. ("Apex") report, which was incorporated into the Adams report, identify technical details of the condition and layout of Buckner Dam. We understand you to assert access to this information would make Buckner Dam vulnerable to an act of terrorism. Upon review, we find the Apex report identifies the technical details of particular vulnerabilities of Buckner Dam to an act of terrorism. Accordingly, the city must withhold the Apex report under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, we find the remaining information pertaining to the removal of vegetation and remediation of erosion and animal burrowing does not pertain to Buckner

Dam specifically, but instead addresses maintenance of dams in general. Thus, we conclude the city failed to establish how any of the remaining information identifies the technical details of particular vulnerabilities of Buckner Dam. Additionally, we find the city has failed to demonstrate how any of the remaining information relates to assessments of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Consequently, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177 or section 418.181 of the Government Code. As you raise no other exceptions against the disclosure of the remaining information, it 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# 443014

Enc. Submitted documents

c: Requestor  
(w/o enclosures)