



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2012

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-01578

Dear Ms. Cohen:

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# 444719 (PIR# 11-2805).

The Texas Department of Public Safety (the "department") received a request for information concerning the purchase of certain motion-triggered cameras along the state border. 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.

You acknowledge the department failed to comply with the requirements of section 552.301 of the Government Code in asking this office for a ruling. 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient to overcome this presumption. *See id.* § 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 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); 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). Your claim under section 552.101 of

the Government Code can provide a compelling reason for non-disclosure; therefore we will consider the applicability of this exception.

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 other statutes make confidential. You raise section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.182 provides in part:

(a) 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.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under [the Act].

Id. § 418.182(a), (b). The fact that information may generally be related to a security system 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). As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA 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 assert the submitted information reveals detailed specifications of cameras being used in the state border camera program. You explain this program consists of electronic surveillance equipment hidden at strategic locations along state border crossing routes. You state the purpose of these cameras is to serve as a security system and to detect terroristic threats. Upon review, we find the information we have marked relates to the specifications of security systems used to protect public and private property from an act of terrorism or related criminal activity. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, the remaining information, which includes financial information concerning the purchase of equipment, does not relate to the specifications, operating procedures, or location of security systems used to protect public property from an act of terrorism or related criminal activity. Accordingly, we conclude this information is not confidential under section 418.182(a) of the Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

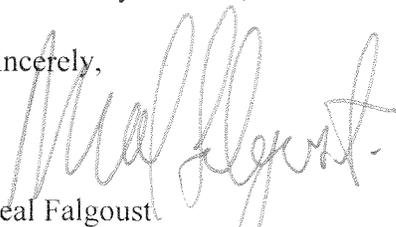
Section 552.101 of the Government Code also encompasses section 418.181 of the Government Code, which was also added as part of the HSA. Section 418.181 provides, “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” *Id.* § 418.181. Upon review, we find you have not demonstrated any of the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 444719

Enc. Submitted documents

c: Requestor
(w/o enclosures)