



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2012

Mr. David Sorola  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2012-05769

Dear Mr. Sorola:

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# 451267.

Austin Energy received a request for "a map showing the general location of towers, poles, lines, and substations." You claim that 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's assertion that Austin Energy should possess information responsive to the portions of the request seeking the locations of towers and poles. You state Austin Energy does not possess information showing the locations of towers and poles. We note the Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). Whether Austin Energy has information responsive to these portions of the request is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).

Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept Austin Energy's representation that it has no additional responsive information that it has not already provided to this office. We note a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8-9 (1990). We assume Austin Energy has made a good faith effort to do so.

Next, we note that, in his request for information, the requestor states he is not seeking "technical information," voltages, or maximum loads on lines. Therefore, those types of information are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and Austin Energy need not release such information in response to this request.

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. You assert the submitted map is confidential under section 418.181 of the Government Code, which 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).

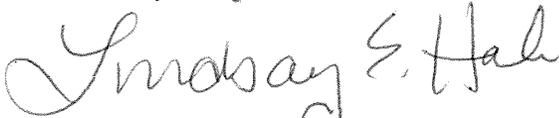
You explain Austin Energy is the City of Austin's (the "city") municipally-owned electric utility. You assert, and we agree, Austin Energy's electric transmission system, which provides electric power for the city, is critical infrastructure because "it relates details about the generation, transmission, or distribution of energy." *See 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, economy, or morale of the state or the nation"). The requestor concedes that the electric transmission system constitutes critical infrastructure, but argues he seeks only information that could be viewed by a person on the street, which would not expose the city's electric transmission system to additional

vulnerabilities. You state the submitted map “shows exactly how the utility’s electric transmission system is organized,” and a person could use this information to “plan attacks on the system because the map shows the electric lines connectivity that could be used to pinpoint physical locations where a person or group could sabotage or destroy infrastructure that would maximize damage” and cause possible “blackouts throughout the statewide electric grid.” Based on the submitted arguments and our review of the submitted information, we find that you have demonstrated release of the submitted responsive information would identify the technical details of particular vulnerabilities of Austin Energy’s electric transmission system to an act of terrorism. Thus, the submitted responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 451267

Enc. Submitted documents

c: Requestor  
(w/o enclosures)