



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2012

Ms. Lisa D. Mares
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2012-08289

Dear Ms. Mares:

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# 457216.

The City of Richland Hills (the "city"), which you represent, received a request for information pertaining to the buildings encompassed by and the estimated or budgeted cost of certain security measures. You state the city has released some information to the requestor. 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 the requestor's request is phrased in the form of questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). The Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the city has made a good faith effort to relate the requestor's request to information in the city's possession. Accordingly, we will address the city's claimed exceptions for the submitted information.

Next, as you acknowledge, the city failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to 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 that is made confidential by other statutes. You raise section 552.101 in conjunction with a provision 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. The fact that information may be related to a governmental body's 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 the submitted information relates to the city's assessment of the risk or vulnerability of a municipal building to an act of terrorism or related criminal activity. You also state the submitted information identifies particular vulnerabilities of the building and

lays out proposed modifications to the layout and location of the building's security systems. Based on your representations and our review, we find the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.177 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.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 457216

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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