



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Ms. Elaine Nicholson
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-11160

Dear Ms. Nicholson:

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# 459346.

The City of Austin (the "city") received a request for (1) information pertaining to tests to assess the relative age of water found in the aquifer layers in the vicinity of the Jollyville Transmission Main, (2) information generated on or after October 1, 2011, regarding the Jollyville Plateau Salamander, and (3) correspondence sent or received after June 1, 2011, between the city and either the United States Fish and Wildlife Service or the United States Department of the Interior, regarding the Jollyville Plateau Salamander. You state most of the requested information will be released 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.

Section 552.101 of the Government Code excepts from public 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 another statute makes confidential. You raise section 552.101 in conjunction with section 418.181 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. These provisions make certain information related to terrorism confidential. 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; *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, economy, or morale of the state or the nation”). The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of 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 is confidential under section 418.181 of the Government Code. You explain the submitted information identifies the location of karsts along the Barton Springs segment of the Edwards Aquifer, which are home to the Jollyville Plateau Salamander. You inform us that this segment of the Edwards Aquifer provides drinking water to approximately 50,000 city residents through municipal and private wells. You indicate, and we agree, that the city’s drinking water supply system is part of the city’s critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). You argue that the information at issue reveals vulnerabilities of drinking water supply systems to chemical and biological attacks. In support of this argument, you state that public release of this information would make it impossible for the city to secure a large number of sites that are vulnerable to a potential introduction of toxic substances into multiple water supply systems. Based on your representations and our review of the information at issue, we find that you have demonstrated the applicability of section 418.181 to the information at issue. Thus, the city must withhold the submitted information under section 552.101 of the Government Code on the basis of 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, 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 black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/tch

Ref: ID# 459346

Enc. Submitted documents

c: Requestor
(w/o enclosures)