



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2012-15010

Dear Mr. Alcorn:

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# 468232.

The City of Grand Prairie (the "city") received a request for shapefiles depicting the water distribution system with water supply and usage data as well as the sewer distribution system with sewer discharge for each household. You claim the submitted information is excepted from disclosure under sections 552.101, 552.113, and 552.139 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you state the requested usage data is not available in the format sought by the requestor, and this portion of the request requires the creation of a new document. We note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to claim this section based on the submitted arguments.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Nos. 563 at 8 (1990), 555 at 1-2 (1990). Additionally, the Act does not require a governmental body to release information that did not exist when it received a request. 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, 452 at 3 (1986), 362 at 2 (1983). In this instance, you state only that the city does not maintain a record in the format sought by the requestor, not that the data responsive to this portion of the request did not exist on the date of the request.

A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. See Gov't Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that request. Accordingly, while the city is not required to create a document in response to the request, documents from which the requested usage information may be derived would be responsive to this request. A government body must make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

Section 552.231 of the Government Code prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. See Gov't Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information or to seek a ruling from this office as to whether the information is excepted from disclosure. See *Fish*, 31 S.W.3d at 682. Thus, the city's officer for public information carries the duty of promptly producing such public information when it is requested, unless the city wishes to withhold the information. Gov't Code §§ 552.203, .221. Further, a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). In this instance, the city has submitted information that it has deemed to be responsive to the request. Accordingly, we will consider the city's arguments against disclosure.

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.

Section 418.181 of the Government Code 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 state the submitted shapefiles and information contained within the shapefiles reveal vulnerabilities of the city’s water and sewer systems. We note the city’s water and sewer systems are critical infrastructure. *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”). You explain the release of the submitted information could provide someone who intends to use such information improperly with the ability to breach security or introduce harmful substances into the city’s water supply. Based on your arguments and our review of the information at issue, we find the city has shown that release of the submitted information would identify the technical details of particular vulnerabilities of the city’s water and sewer systems to an act of terrorism. Thus, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.³

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

³As our ruling is dispositive, we do not address your arguments against disclosure of the submitted information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 468232

Enc. Submitted documents

c: Requestor
(w/o enclosures)