



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Ms. Carol Longoria
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-17998

Dear Ms. Longoria:

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# 468982 (OGC# 145664).

The University of Texas at Austin (the "university") received a request for any and all documents generated since August 1, 2009, relating to any structural analysis, repairs or reinforcements performed on the Summit Structures facility located on the roof of the Moncrief-Neuhaus Athletics Center ("M-NAC"). You state the university will release certain responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you state release of some of the submitted information may implicate the proprietary interests of Twin City Fan Companies, Ltd. and Summit Structures, L.L.C. (collectively, the "third parties"). Accordingly, you inform us the university notified the third parties of the request and of their rights to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be

released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of any of the interested third parties. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude the university may not withhold any of the submitted information on the basis of any interest the third parties may have in the information.

Section 552.101 of the Government Code exempts 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 assert the submitted information is confidential under section 418.181 of the Government Code. You explain the submitted information reveals information about an annual structural integrity analysis of the M-NAC roof structure. You inform us that this area is used as a gathering place for university personnel, alumni, and the general public, before, during and after games, and that in total, several thousand people access this area on any given home football weekend, in addition to thousands more in the immediate vicinity. You indicate, and we agree, that the M-NAC is part of the university’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 comprises details of critical infrastructure by revealing technical aspects necessary to ascertain the construction, layout, design, strengths and potential weaknesses of the M-NAC roof structure. In support of this argument, you state that public release of this information “could allow terrorists or others with criminal intent, to pinpoint potentially vulnerable aspects of the structure and exploit those weaknesses.” 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 submitted inspection reports. Thus, the university must withhold the submitted reports under section 552.101 of the Government Code on the basis of section 418.181 of the Government Code. However, we conclude you have failed to establish that releasing the submitted e-mails would reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the university may not withhold any of the remaining information under section 552.101 in conjunction with section 418.181.

You also assert section 552.101 in conjunction with Homeland Security Presidential Directive 7 (“HSPD-7”) for the remaining information. HSPD-7 establishes a national policy for federal agencies to identify and prioritize key resources and critical infrastructure in order to prevent terrorist attacks. *See Homeland Security Presidential Directive 7: Critical Infrastructure Identification, Prioritization, and Protection* § 1 (President George W. Bush, Dec. 17, 2003). This directive issues instructions to various federal agencies regarding establishing policies, coordinating activities, and developing plans for the protection of key resources and critical infrastructure. *See generally id.* We first note HSPD-7 applies only to federal agencies. *See id.* §§ 1, 11. Although federal agencies are directed to coordinate with state agencies in certain instances, the directive requires certain actions only of federal agencies. *See id.* §§ 8, 12, 19.a. In addition, HSPD-7 does not make any information confidential. *See Open Records Decision No. 478 (1987)* (as general rule, statutory confidentiality requires express language making information confidential). Therefore, the university may not withhold any of the remaining information under section 552.101 in conjunction with HSPD-7.

We note the remaining information contains information subject to section 552.117 of the Government Code.¹ Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 of the Government Code not applicable to

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

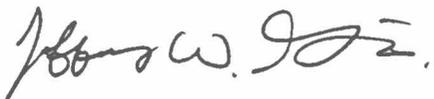
cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information is at issue timely elected to keep his information confidential pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the university must withhold the information we have marked under section 552.117(a)(1). The university may not withhold this information under section 552.117 if the employee did not timely elect to keep his information confidential or if the cellular telephone service is paid for by a governmental body.

In summary, the university must withhold the submitted inspection reports we have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. If the employee whose information we have marked timely elected to keep his information confidential pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the university must withhold the information we have marked under section 552.117(a)(1) 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 468982

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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