



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2013

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2013-07809

Dear Ms. Shortall:

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# 488480 (Arlington ORR W010880-031913)

The City of Arlington (the "city") received a request for the list of commercial and industrial businesses with backflow devices. 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 representative sample of information.¹

We note portions of the submitted information are not responsive to the instant request for information because the information does not pertain to commercial or industrial businesses. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

¹We 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 that submitted to this office.

Section 552.101 of the Government Code exempts 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 responsive information 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 assert, and we agree, the city’s water system, which supplies water to city residents, is critical infrastructure because “its function is vital to the security, governance, public health, safety and economy of the [c]ity.” *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”). You state the responsive information relates to businesses in the city that have not been tested for sufficient backflow assemblies, the purpose of which is to protect the city’s water supply from contamination or pollution due to any cross-connections. You also state release of the information would provide a criminal or terrorist with information on access points to the city’s water system. Based on your representations and our review, we find you have demonstrated release of the responsive information would identify the technical details of particular vulnerabilities of the city’s water system to an act of terrorism. Thus, the 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, 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, appearing to read "D. Wheelus".

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 488480

Enc. Submitted documents

c: Requestor
(w/o enclosures)