



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2013

Ms. Donna L. Johnson  
Counsel for the Gulf Coast Water Authority of Texas  
Olson & Olson, LLP  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2013-09664

Dear Ms. Johnson:

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# 490763 (Ref: GCA13-001).

The Gulf Coast Water Authority of Texas (the "authority"), which you represent, received a request for hourly pumping records for two specified pump stations for a specified time period, certain records for a specified diversion, and as-built drawings for a specified spillway. You indicate you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the authority has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason may exist to withhold information

when the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.110 can provide compelling reasons to overcome this presumption, we will address the applicability of these sections 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 section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “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 submitted 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 state the spillway at issue represents a critical function of the authority’s operations as part of the American Canal system by providing water services for the citizens within Brazoria, Fort Bend, and Galveston Counties. Upon review, we agree the spillway at issue is critical infrastructure. *See id.* § 421.001(2) (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 inform us the submitted information consists of construction plans that include details of particular vulnerabilities of critical infrastructure to an act of terrorism, the release of which would create a vulnerability in the security of the authority’s critical infrastructure. Based on your arguments and our review of the submitted information, we find you have demonstrated release of the submitted information would identify the technical details of particular vulnerabilities of the spillway at issue 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.<sup>1</sup>

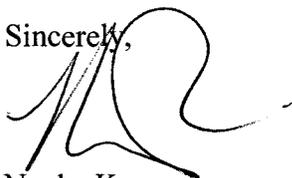
---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 490763

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Freese and Nichols  
3100 Wilcrest, Suite 200  
Houston, Texas 77042  
(w/o enclosures)