



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2014

Ms. Rebecca Hendricks Brewer
Counsel for City of Frisco
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2014-14125

Dear Ms. Brewer:

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# 533325.

The City of Frisco (the "city"), which you represent, received a request for the city approved drawings related to a specified permit. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of Morton M. Gruber, AIA, Architect ("Gruber"). Accordingly, you state, and provide documentation showing, you notified Gruber of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and have 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."

¹Although you do not cite to section 552.101 of the Government Code in your brief to this office, we understand you to raise section 552.101 based on the substance of your argument.

Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Sections 418.176 through 418.182 of the Government Code were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). These provisions make certain information related to terrorism confidential. The fact that information may relate to a governmental body's security concerns or emergency management activities 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 a claimed provision. As with any exception to disclosure, a claim under the HSA 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). In this instance, although you generally assert the submitted information is confidential under the HSA, you have not provided any arguments explaining this assertion. *See id.* Consequently, we find you have failed to demonstrate the information is confidential under the HSA, and we find the city may not withhold the submitted information under section 552.101 on that basis.

We note 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 information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Gruber explaining why the submitted information should not be released. Therefore, we have no basis to conclude Gruber has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, the city may not withhold the submitted information on the basis of any proprietary interest Gruber may have in the information. As no exceptions to disclosure have been raised, the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 533325

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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