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ATTORNEY GENERAL OF TEXAS

March 15, 2017

Mr. Ryan D. Pittman
Counsel for City of Frisco
Abernathy Roeder Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069-3276

OR2017-05354

Dear Mr. Pittman:

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# 649698.

The City of Frisco (the "city"), which you represent, received a request for structural drawings for a specified building. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of LR Engineering ("LR"). Accordingly, you state, and provide documentation showing, you notified LR 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 reviewed the submitted arguments and the submitted information.

You argue the submitted information is excepted from disclosure by section 552.101 of the Government Code, which 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 confidential certain information related to terrorism. 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. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). 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 inform us the submitted information consists of building plans for an office building within the city, and you contend disclosure of the information would put the security of public and private assets at risk. Upon review, we find you have not demonstrated the building is critical infrastructure for purposes of section 418.181 of the Government Code. *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"). Thus, we find you do not explain the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Additionally, you do not explain the information at issue was collected, assembled, or is maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity. Moreover, you have not demonstrated the information at issue consists of access codes and passwords or reveals the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 or 418.182 of the Government Code.

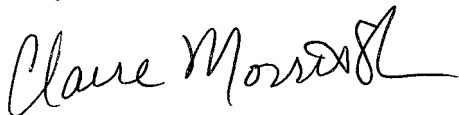
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure.

See id. § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from LR explaining why the submitted information should not be released. Therefore, we have no basis to conclude LR 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 LR may have in the information. Therefore, the city must release the submitted 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/ndm

Ref: ID# 649698

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)