



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2017

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernath Roeder Boyd Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2017-07110

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# 652465 (Ref.# G015350-011217).

The City of Frisco (the "city"), which you represent, received a request for building plans for a specified location.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of BEI Basharkhah Engineering ("BEI"). Accordingly, you state, and provide documentation showing, you notified BEI of the request for information and of its right to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

¹The city sent the requestor an estimate of charges, which required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See* Gov't Code § 552.263(a). You inform us the city received the required deposit on January 17, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with sections 418.181 and 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. 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. The fact information may generally be related to a governmental body’s security concerns or to a security system does not make the information per se confidential under sections 418.181. *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 confidentiality provision, a governmental body asserting sections 418.181 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You seek to withhold the submitted information under sections 418.181. You state the submitted information “identifies particular vulnerabilities as well as strong and weak points” in the design and operation of the critical infrastructure. You argue the submitted information must remain confidential “to protect and defend [the city’s] citizens and others located in/near the critical infrastructure.” We agree the submitted information contains information pertaining to critical infrastructure. *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”). Based on your representations and our review, we find the city has demonstrated that release of the submitted information would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 652465

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)