

**PUBLIC INFORMATION ACT: HOMELAND SECURITY EXCEPTION  
PROTECTING CONSTRUCTION PLANS OF CRITICAL INFRASTRUCTURE**

How does the Public Information Act apply to construction plans which contain specific details of design and methods of construction? Are there any exceptions that may prevent disclosure of details in construction plans that in the wrong hands essentially become a thorough, how-to picture book for terrorists? This paper discusses how to assert the Texas Homeland Security Act confidentiality provisions in the face of a public information request for blueprints of critical infrastructure.

City building inspection departments receive construction plans of publicly and privately owned buildings. These plans show to minute detail the method of construction of the building. Most city attorneys will assume these are public records. Indeed many recent requests for attorney general review take no position or assert no exception.<sup>1</sup>

**Texas Homeland Security Act**

Various governmental records related to emergency response and preventing, detecting or investigating an act of terrorism or related criminal activity are made confidential by law. As part of the Texas Homeland Security Act, [HSA] sections 418.176 through 418.182 were added to chapter 418 of the GOVERNMENT CODE.<sup>2</sup> These provisions make certain information related to terrorism confidential. Chapter 418 is a statute that can be asserted under §552.101 as “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

**I. Notes on procedure**

**A.** Mere recitation of statute’s key terms is not sufficient to demonstrate the applicability of claimed provision. The fact that information may relate to the security concerns of a governmental body or a private entity does not make the information *per se* confidential under the Texas Homeland Security Act.<sup>3</sup> A governmental body or third party asserting sections 418.176 and 418.181 must adequately explain how the responsive records fall within the scope of those provisions.<sup>4</sup> The governmental body must explain how the claimed exception applies.

- Security system improvements to recreation facilities must be disclosed for lack of explanation. OR2003-8302 at 5.

**B.** In order to assert this exception, the city must comply with the procedural requirements of §552.301 and request an attorney general decision. Pursuant to § 552.302, a governmental body's failure to comply with §552.301 results in the legal

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<sup>1</sup> Examples include OR2002-0973, OR2005-0056, OR2006-11679.

<sup>2</sup> Summarized at page 14 of this article.

<sup>3</sup> ORD 649 at 3 (1996) language of confidentiality provision controls scope of its protection.

<sup>4</sup> See generally Gov't Code § 552.301(e)(1)(A). This paragraph is part of the attorney general boiler plate response in letter opinions.

presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure.<sup>5</sup> Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake.<sup>6</sup> Claims under §552.101 of the GOVERNMENT CODE can provide compelling reasons to withhold information, and the attorney general will address arguments under Chapter 418 even when submitted late.<sup>7</sup>

C. Third parties may assert HSA confidentiality provisions.

- Dallas Cowboys Football Club, Ltd. allowed to assert that the stadium is critical infrastructure. OR2006-13186
- TXU asserts location of buried utilities is critical infrastructure. OR2004-0488

## II. §418.181. Confidentiality of Certain Information Relating to Critical Infrastructure.

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.<sup>8</sup>

### A. What is “critical infrastructure”?

GOVERNMENT CODE § 421.001. Definitions. In this chapter:

- (2) "Critical infrastructure" includes 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.

While the attorney general has assumed some items to be critical infrastructure, don't bank on it. The requestor must give explanation of how the property meets the definition of critical infrastructure. This can be public or private property.

Examples of items assumed by attorney general:

- TxDOT list of critical bridges and tunnels assumed to be critical infrastructure without explanation. OR2003-9082
- Courthouse assumed to be critical infrastructure without explanation. OR2006-11806
- City water mains assumed to be critical infrastructure without explanation. OR2005-07574

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<sup>5</sup> *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); Open Records Decision No. 319 (1982). Again, AG boiler plate.

<sup>6</sup> See Open Records Decision No. 150 at 2 (1977).

<sup>7</sup> OR2006-15113

<sup>8</sup> Tex. Gov't Code §418.181

- Austin Bergstrom International Airport communications network assumed to be critical infrastructure, without explanation. OR2007-4805

Examples of supporting information provided by requestor:

- Citibank data process center that provides electronic backup of billions of commercial transactions, supported by report from US Securities and Exchange Commission, is critical infrastructure. OR2004-5232
- City's radio communication system, supported by statement describing it, is critical infrastructure. OR2004-6953
- LCRA's fiber optic system, supported by description that it transmits mobile radio traffic of public safety entities, is critical infrastructure. OR2003-8462
- Design of city wide Wi-Fi system, described as source of data communication of city's first responders, is critical infrastructure. OR2006-06282
- ARC GIS layer file of current and future water & sewer lines, identifying all pipes, valves, check valve and sampling stations of potable water system, is critical infrastructure. OR2006-06481
- Cowboy stadium, based upon FBI warning of attacks on sporting events and National Homeland Security report, is critical infrastructure. OR2006-13186

Examples of no support equals no protection:

- No critical infrastructure identified in seeking to protect number of people who received smallpox vaccine. OR2003-6503
- No showing that public school buildings are critical infrastructure. OR2006-03660
- No showing that city water source is critical infrastructure. OR2005-02973
- No showing that variable air volume laboratory airflow control system of Texas A&M University is critical infrastructure. OR2004-7284.
- No showing how recreation center, tennis and swimming pool facilities constitute critical infrastructure. OR 2003-8302

If air quality of 45,000 students at a major research university isn't assumed to be critical infrastructure, how do we show Cowboy stadium or your city's project is critical infrastructure? First, consult your Fire Chief or your coordinator for federal homeland security. The United States Homeland Security department criteria of "national level critical infrastructure and key resources"<sup>9</sup> include a two page list describing facilities. It includes: **Stadiums – Arenas:** Economic impact of loss greater than \$10 Billion or capacity greater than 25,000 individuals. [It also includes 4 year and 2 year colleges and universities, making Texas A&M a critical asset to the federal government if not the attorney general.] Second, *The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*<sup>10</sup> has excellent descriptions about the need to protect various examples of private and public places. Third, paint a picture that makes it easy for the attorney general to agree your project is critical infrastructure:

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<sup>9</sup> This will be part of your city's confidential federal homeland security risk analysis.

<sup>10</sup> The White House, February 2003. Page 78. Full text available at [http://www.dhs.gov/interweb/assetlibrary/Physical\\_Strategy.pdf](http://www.dhs.gov/interweb/assetlibrary/Physical_Strategy.pdf)

Cowboys Stadium in Arlington is a multi-functional stadium, designed to seat approximately 75,000, or more, spectators, to be used as the home field football stadium for the Dallas Cowboys Football Club, a professional football team member of the National Football League. It is a sports and community venue project under Local Government Code Chapter 334, owned by the City of Arlington, Texas. It is being constructed in the City's entertainment district which features, in close proximity shown on the attached map, Amerquest Field, a sports stadium with a capacity in excess of 45,000 and home of the Texas Rangers, a professional baseball team member of Major League Baseball; the Arlington Convention Center, a 176,000 square foot facility which averages 350,000 attendance at 250 events annually; the original Six Flags Over Texas, the biggest family theme park in the central states and the southwest, attracting over 3 million visitors a year; and Six Flags Hurricane Harbor, the largest water park in the southwest.

The City of Arlington commissioned a fiscal analysis of the then proposed stadium prior to the Chapter 334 election. Economic Research Associates provided an Economic and Fiscal Impacts report August 30, 2004.<sup>11</sup> The major findings of economic impacts include:

One time construction impacts (2010 dollars):

Tarrant County	\$348,660,000
City of Arlington	\$ 71,764,000

Annual Economic output (2010 dollars):

Tarrant County	\$416,130,000
City of Arlington	\$238,096,000

Cumulative 30 year impacts:

Tarrant County	\$12.48 billion
City of Arlington	\$ 7.14 billion

In summary, the Cowboys Stadium in Arlington is a public asset vital to the economy of the state. The millions of football fans in Texas, who know this team as "America's Team", will attest to its function as vital to the morale of the state. As such, it meets the Texas Homeland Security definition of "critical infrastructure".<sup>12</sup>

**B. Identify the technical details of particular vulnerabilities**

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<sup>11</sup> Full text of report is available at:  
[http://www.ci.arlington.tx.us/citysecretary/pdf/110204/110204\\_ERASTudy.pdf](http://www.ci.arlington.tx.us/citysecretary/pdf/110204/110204_ERASTudy.pdf)

<sup>12</sup> Excerpt from City's request for an attorney general determination.

The second prong of this test is whether the records identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Be prepared to identify details and explain how these details identify specific vulnerability of the critical infrastructure. Drawings and plans that depict exterior views, or something visible to the public such as exterior elevation, landscape plan and tree survey will not be confidential. OR2004-5232

Again, there are examples of attorney general letters that accept a finding of vulnerability with very little comment.

- Blue prints show vulnerabilities of the city water supply system. OR2005-7574
- List of critical bridges show vulnerability. OR2003-9082
- Houston strategic wireless system study. OR2004-6953

But more often we find the “mere recitation of statute” doesn’t get you very far.

- No showing that project manual of HVAC system and bio-toxins reveals vulnerability. OR2004-7284
- No showing that water well driller’s log shows vulnerabilities. OR2005-2973
- Information [maps of gas lines] held by city that has been and remains available to the public, both commercially and from the Railroad Commission, even if it may reveal vulnerabilities, will not be confidential by §418.181. OR2004-488.
- Time Warner did not explain how revealing technical details reveals particular vulnerabilities of communication network of Austin Bergstrom International Airport. OR2007-4805
- Number of people getting small pox vaccine isn’t a technical detail singling out particular vulnerabilities. OR2003-6503
- No showing that HVAC system of three city buildings reveals vulnerabilities. OR 2006-15113
- No showing of how daily and hourly water consumption and water storage reveal vulnerabilities. OR2006-11772

Examples of supporting information provided by the requestor:

- Affidavit of Sheriff states how floor plan of court house reveals several vulnerabilities, including location of single and double walls, mechanical rooms, electrical outlets, communication systems, and private entrances and exists. OR2006-11806
- Affidavit of assistant fire chief and deputy police chief explain how construction plans of Cowboy stadium reveal vulnerabilities and how terrorist could use such information to his advantage. OR2006-14727
- Requestor describes how location of water vales, check valves and sampling stations can be use to determine the most effective place to place toxins in the water system to receive maximum exposure. OR2006-6481
- Requestor explains how maps show physical location of fiber routes and identifies which routes are protected and which are not. OR2003-8462

### **C. Target of terrorism not just criminal acts**

The third prong of this test is whether the records identify the vulnerabilities of critical infrastructure to an act of terrorism. The homeland security provisions will not provide a catch all for criminal incident reports. The document must relate to terrorism or related criminal activity. All of the HSA provisions include the phrase “an act of terrorism or related criminal activity.” These provisions are not intended to protect information pertaining to “criminal activity that is unrelated to terrorism.” OR2003-8302

- The incident report of suspicious activity at school, not enough. OR2007-1601
- Generalities of internal police communication, not enough. OR2007-272
- While security contractor tactical plans may be withheld, specific incident report may not. OR2007-4863

The best way to establish these two prongs of vulnerabilities to acts of terrorism is by affidavit of the police officers who investigate and the fire personnel who respond to the acts of terror. Attached pages 12 and 13 are the qualification statements of the homeland security experts of the City of Arlington. Make it easy for the attorney general by getting affidavits from the “Primary Commander for Weapons of Mass Destruction and Terrorist events”. In the confidential portions of the affidavit, that will not be revealed here, these two experts gave specific descriptions of what the construction plans mean and how terrorists use that information. For example:

From the police: Exhibit \_\_\_\_ shows the exact number of occupants of each section or room of \_\_\_\_\_. It shows the direction of travel, the level of fire protection of the wall construction, the time it will take the occupants to move through the exit paths. We use this information to determine the staging locations of our officers and equipment, this information in the hands of terrorists point to the area of greatest concentration of people. This particular vulnerability relates to congestion of corridors and movement of people who may be in panic. It is well known that exit paths are the first area of terrorist interest to block the occupants and create panic, with the resulting added risk of personal injury and death.

From the fire department: The \_\_\_\_\_ show precise dimensions of all ramps, stairs and details of the primary exiting routes. These are all life safety issues for the stadium occupants and emergency responders. \_\_\_\_\_ gives an example of the vulnerability of the exit ways. A bomb placed in the \_\_\_\_\_ on \_\_\_\_\_ could disable the \_\_\_\_\_.

**D. Emergency Response Providers**

- It is not enough to claim [or be] an emergency response provider. How does the requested document reveal staffing requirements or tactical plan? OR2007-1601
- List of staff and cell phone numbers reveals staffing needs and may be withheld. Port security contract staffing needs may be withheld, but not the hourly rates or monthly costs. OR2007-4863

- List of number of staff who received small pox vaccine that reveals number of emergency response providers prepared to handle small pox outbreak is confidential. OR2003-6503
- Documentation of county's expenditure of UASI grant funds does not reveal staffing requirements or tactical plan. OR2005-8841

**E. Other Homeland Security exceptions**

- No showing that video from state capitol security cameras reveals operating procedure of security system protected by §418.182. OR 2005-7765
- Information revealing location of toxins in UT medical branch is confidential, but not the names of biological toxins or employees conducting the studies of potential vaccines. §418.178. OR2007-489

**F. Construction plans and the run-of-the-mill criminal**

If we can't use HSA to protect construction plans from the non-terrorist criminal, what about TEX. GOVERNMENT CODE §552.108(a) which protects from disclosure information held by a law enforcement agency that deals with detection, investigation or prosecution of crime, the release of which would interfere with the detection, investigation or prosecution of crime. §552.108(b) protects from disclosure an internal record of a law enforcement agency, maintained for internal use in matters relating to law enforcement, the release of which would interfere with law enforcement. §552.108(b) is intended to prevent disclosure of law enforcement methods, techniques and strategies. As example, a sketch showing the security measures of the Texas Department of Corrections' plans for a scheduled execution can be withheld because its release would compromise crowd control efforts.<sup>13</sup> The building inspection function cannot claim this exception; however portions of the construction plans may reflect law enforcement operations facilities that have been designed in consultation with the police and fire department personnel. If those portions would reveal law enforcement methods, techniques and strategies, the release of which would interfere with law enforcement operations, then this exception can be asserted in a submittal to the attorney general. To be able to do that, members of the police department should note such portions of the plans.

**Summary**

Construction plans for Cowboy stadium included 2100 sheets of drawings, 508 were responsive to the request for architectural plans. Reviewing 2100 sheets in the 10 days after a request for records would be nearly impossible. It essential that the sensitive information be identified early so that proper actions can be taken to protect the information. The request to protect these plans came from the police chief concerned about a terrorist attack. If you don't know a RCP<sup>14</sup> from a vomitory,<sup>15</sup> you need to sit down with the architect and building official and go through the plans. Once familiar with what the plans mean, go through them page by page with the architect, contractor and your police and fire experts. It is amazing what they will say about the use of the

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<sup>13</sup> ORD 413 (1984)

<sup>14</sup> RCP stands for "reflected ceiling panel".

<sup>15</sup> A vomitory is the area at the end of staircases or escalators where occupants will leave the exit way.

plans and reported terrorist acts that you can then put into the affidavit. Let the experts use their own words in the affidavit.

Terrorists with access to this information can impair or disable incident command and response operations to increase panic and enhance the likelihood of death among emergency responders and members of the public (numbering between 75,000 and 100,000) attending events at the facility.

This information is useful to terrorists strategizing how to incite panic, inflict injuries and/or kill large numbers of people.

Exit paths are primary areas of concern specifically in the realm of secondary devices (bomb detonation) with the terrorists' aim of maximizing deaths to those escaping an incident and those responding to an incident.

We use HVAC system information to develop emergency environmental control strategies to protect building occupants and to stop the spread of air borne contaminants. Ceiling voids are typically unmonitored spaces for terrorists to hide and place materials and/or devices to damage or destroy the structure and injure or kill emergency responders and members of the public.

Let's move beyond Cowboy stadium. Are you ready to release the construction plans of the 911 dispatch center, the jail, the waste water treatment plant, an elevated storage tank [AKA water tower]? The public schools? Fire warning system plans for the school for the deaf? Evacuation plan for mega church that seats 20,000? City staff needs to have sensitivity to the emergency responders concerns and determine which type of items they want to protect. In the 911 reconstruction, the police identified this issue very early and help identify which sheets to protect, should we get an open records request.

How does this relate to the typical subdivision developer and the City's readily available infrastructure as-built drawings? These maps are available to anyone who walks into city hall. These maps show location and size of all streets, drainage facilities, and water and sewer lines. Any new construction must have access to this for the orderly development of the public infrastructure. Plans that show what any user of the street can see should be released. But plans that may show the technical details of the operation of the water and sewer system may be worth protecting and should not be readily available at the counter. If a public request is made, in order to support an attorney general determination of confidentiality, the utility system expert should review the plans and be able to identify the vulnerabilities of the system that the technical details that reveal, and how that could be used by a terrorist.

**JUST A REFRESHER ON COPYRIGHT AND CONSTRUCTION PLANS  
BY MOLLY SHORTALL, ARLINGTON ASSISTANT CITY ATTORNEY**

**QUESTION:**

- (1) What documents submitted by architects and engineers to obtain building permits are considered to have copyright protection?
- (2) Should the City make photocopies of copyright protected building plans and specifications in response to a proper Open Records request?
- (3) Can the City direct the requesting party to the architect or engineer for copies of the copyright protected building plans and specifications?

**SHORT ANSWER:**

- (1) Depends on whether the document shows the artistic work in the design of the building, which would be copyright protected, or whether it depicts only facts regarding the building or property, which are not protected.
- (2) No. However, the City must make copyrighted materials, held as public records, that are otherwise subject to public disclosure under the Texas Public Information Act, available for public inspection, and allow members of the public to make copies of such records unassisted by the City.
- (3) Yes, but this referral cannot substitute the City's obligation(s) under the Texas Public Information Act to provide access to public records.

**DISCUSSION:**

Copyright protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architectural work. Copyright does not protect facts, ideas, systems, or methods of operation. 17 U.S.C.S. §102. An "architectural work" is defined as "the design of a building as embodied in any tangible medium of expression," including any permanent habitable structures such as office buildings, restaurants, houses, condos, churches and museums. *Id.* at §101. Bridges, dams, mobile homes, recreational vehicles and boats are excluded from protection, as are functionally required elements of a building including standard features such as windows, doors and other building components whose design or placement are dictated by utilitarian concerns. In addition an architect- engineer need not register their work or include a symbol or language notating copyright in order to be afforded protection under the Copyright Act. *Id.* at §408.

Although there can be some difficulty determining which documents maintained by the City would be afforded copyright protection and which would not; there are general categories of documents that can be addressed.

- Documents that were created by the City and are maintained on file for the property, such as building permits and certificates of occupancy, are not subject to any copyright protection.
- Documents such as site plans, plats, or other documents that merely show facts about the property (i.e. where it is located, lot size, location of existing buildings, location of easements, etc...) are also not subject to copyright protections as these are not “original works of authorship”.
- Blue prints, floor plans and other documents that show the artistic work in the design of the building (i.e. arrangement of the rooms, material used on the façade, overall design of the building, etc...) are protected by copyright laws.

It might be difficult at times to determine which plans and specifications only include facts regarding the property and which contain artistic work regarding the design of the building. In these situations it would be prudent to err on the side of caution and treat the document as though it were copyright protected. In addition all documents containing a copyright symbol or language such as “copyrighted” or “do not copy” should be treated as copyright protected.

Once it is determined that a document maintained by the City is copyright protected we must examine how copyright protection affects the duties of the City under the Public Information Act. Copyright law is governed and controlled exclusively by federal law to the preemption of any state law that conflict with federal copyright law. Anyone, including a State, a State instrumentality, and any officer or employee of the State or a State instrumentality, who violates any of the exclusive rights that belong to a copyright owner violates copyright law (and is referred to as an “infringer”). Id. at § 501. Anyone who performs some act that assists another party infringe on a copyright is also an infringer. Id.

One of the exclusive rights belonging to a copyright owner is the right to copy and distribute copies of the owner’s copyrighted materials. Id. at §106. A person or entity that infringes on a copyright owner’s rights, or contributes to such infringement, may be subject to civil or criminal penalties for copyright infringement. Id.

The Texas Attorney General’s Office has issued a number of opinions addressing whether a governmental entity must make photocopies of copyrighted materials in response to an Open Records Request. See, Tex. Att’y Gen. ORD-180 (1977) and ORD-550 (1990); see also, Op. Tex. Att’y Gen. Nos. MW-307 (1981), JM-672 (1987). On each occasion, the Texas Attorney General’s Office has answered that the governmental entity does not have to make copies of the copyrighted material although it must still make the material available for inspection by the requesting party. More particularly, the Texas Attorney General’s Office has stated as follows:

While copyrighted information may be subject to public disclosure under the Open Records Act, the custodian of public records must comply with copyright law and is not required to furnish copies of copyrighted records. Members of the public may inspect copyrighted materials held as public

records, and make copies of such records unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of copyright infringement suit.

Tex. Att’y Gen. ORD 550 (1990); citing, Op. Tex. Att’y Gen. No. MW-307 (1981) and Tex. Att’y Gen. ORD-180 (1977). The Attorney General has also indicated that the supremacy clause of the United States Constitution prohibits a records custodian from following the Open Records Act where it conflicts with copyright law; and, that a State which infringes a copyright may be liable in damages to the copyright holder. Op. Tex. Att’y Gen. No. MW- 307 (1981).

There is nothing in the Texas Public Information Act that prevents the City from referring a member of the public to the copyright owner for a copy of copyrighted plans and specifications. However, that referral does not abrogate the need to comply with the requirements of the Texas Public Information Act as it applies to copyrighted materials according to the Texas Attorney General’s interpretation.

**SUMMARY:**

1. Generally speaking documents that merely contain facts regarding a building or property are not protected by copyright law, whereas documents showing the artistic work in the design of the building are.
2. If unable to determine if a document is copyright protected, err on the side of caution and treat the document as though it is protected under copyright laws.
3. When a request is received for a document that is copyright protected allow the requestor to inspect/view the requested documents in your office.
4. Do not assist or help any person to make copies or duplicates of any copyright protected building plans and specifications. If a copier is available for public use, a citizen may choose to copy documents on their own. Public access copiers should have copyright notices posted where anyone making copies will see the notice.
5. Do not allow a person to use or operate any non-public access City equipment capable of copying or duplicating any copyright protected building plan or specifications for that purpose.
6. When a document is not copyright protected, copies of the documents may be made and provided to the requestor.
7. Do not refer a member of the public to the copyright owner instead of complying with the requirements of the Texas Public Information Act. It is not against the law to refer the public to a copyright owner, but the City must also fulfill its duties in complying with the requirements of the Texas Public Information Act.

Sample of Affidavit of Experts

**AFFIDAVIT OF DEPUTY CHIEF OF POLICE**

BEFORE ME, the undersigned authority, personally appeared **Deputy Chief of Police David Pugh**, known to me, who, being by me duly sworn, upon his oath deposed and stated as follows:

“My name is **David Pugh** and I am the Deputy Chief of Police of the Arlington Police Department whose address is 620 West Division Street, Arlington, Tarrant County, Texas 76011. I have personal knowledge of the facts set forth below and am competent to make this affidavit.

I have been employed by the Arlington Police Department for thirty-three years and have held the rank of Deputy Chief of Police for the last fifteen years. I am currently the Deputy Chief over Operations Support, which includes the Jail, Traffic, and Special Operations (Tactical and Swat Unit) divisions. I am also responsible for Homeland Security issues. During my employment with the City of Arlington Police Department I received specialized training in enhanced unified command over natural and manmade disasters. I am designated as the Primary Commander for Weapons of Mass Destruction and Terrorist events.

In addition to my core responsibilities, I am currently assigned to work with representatives of the Arlington Fire Department, the City of Arlington Public Works Division and the Cowboy’s organization to develop special operations plans for the new stadium involving internal and external security controls.

I have personally looked at each of the 508 sheets in Binding 3, “Life Safety and Architectural Plans” and Binding 4, “Architectural Plans”. I personally assisted with the creation of Exhibit “B” the Summary and Index of Responsive Documents and characterization of those documents into the identified exceptions. I made an individualized determination about each of the 508 sheets. I agree with the summary found in Exhibit “B”. In this affidavit I will provide my explanation how the sheets in the representative sample meet the scope of the stated exceptions.

All the following Sheet references provide information relating to staffing and tactical plans of the Arlington Police Department as it relates to the Cowboy’s stadium and are used in the development of preventative measures to deter, prevent prepare for and respond to a terrorist act being carried out against this venue, involving weapons of mass destruction (WMD) which are chemical, biological, radiological, nuclear and explosive (CBRNE) in nature. The sheet references include:

**AFFIDAVIT OF ASSISTANT FIRE CHIEF DON CROWSON**

BEFORE ME, the undersigned authority, personally appeared **Assistant Fire Chief Don Crowson**, known to me, who, being by me duly sworn, upon his oath deposed and stated as follows:

“My name is **Don Crowson**, I am an Assistant Fire Chief of the Arlington Fire Department, which address is 620 West Division Street, Arlington, Tarrant County, Texas 76011. I have personal knowledge of the facts set forth below and am competent to make this affidavit.

I have been employed by the Arlington Fire Department for 23 years. I am currently the Assistant Chief over Operations Support, which includes the Medical Operations, Emergency Management, Dispatch 911 and Data Management. I’m also responsible for directing and managing Homeland Security initiatives and issues for the City of Arlington. I am the principal point of contact for the City of Arlington relating to the federal Urban Area Security Initiative (UASI) program and other State Homeland Security Grant programs. During my employment with the City of Arlington Fire Department, I’ve received specialized training in hazardous materials response, terrorism response and emergency incident command. I am the Fire Department representative responsible for commanding the Emergency Operations Center in the event of a natural or man-made disaster and I’m also responsible for directing large-scale emergency response operations for the City of Arlington.

I have personally looked at each of the 508 sheets in Binding 3, “Life Safety and Architectural Plans,” and Binding 4, “Architectural Plans.” I personally assisted with the creation of Exhibit “B” the Summary and Index of Responsive Documents and characterization of those documents into the identified exceptions. I made an individualized determination about each of the 508 sheets. I agree with the summary found in Exhibit “B”. In this affidavit, I will provide my explanation of how the sheets in the representative sample meet the scope of the stated exceptions to required disclosure under the Public Information Act.

## **Government Code Chapter 418 confidentiality provisions**

**Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:**

- I. §418.176 Confidentiality of Certain information relating to Emergency Response Providers.**
  - Relates to staffing requirements of emergency response providers
  - Tactical plan of provider
  - Pager & telephone numbers of providers
  
- II. §418.177 Confidentiality of Certain information relating to Risk or Vulnerability Assessment**
  - Relates to an assessment of risk or vulnerability of person or property, including critical infrastructure, to an act of terrorism or related criminal activity.
  
- III. § 418.179 Confidentiality of Certain Encryption Codes and Security Keys for Communication System**
  - For public communications system

**In addition:**

**§ 418.178 Confidentiality of Certain information relating to Construction or Assembly of Weapons**

- More than likely to assist in the assembly of an explosive weapon
- Indicates specific location of chemical, biological agent, toxin or radioactive material
- Unpublished information related to potential vaccine or device to detect biological agents

**§418.180 Confidentiality of Certain information prepared for United States**

- Report to an agency of the United States
- Related to act of terrorism, or related criminal activity; and
- Specifically required to be kept confidential by federal law

**§418.181 Confidentiality of Certain information relating to Critical Infrastructure**

- Identify details of particular vulnerabilities of critical infrastructure to an act of terrorism

**§418.182 Confidentiality of Certain information relating to Security Systems**

- Access codes, passwords related to specifications, operating procedures or location of security system used to protect public or private property from an act of terrorism or related criminal activity