



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Ms. Diana L. Granger
City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR94-298

Dear Ms. Granger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24098.

The City of Austin (the "city") has received a request for information relating to the "Disparity Study" prepared for the city and Capital Metro by a private consulting firm to determine whether there is a history of racial exclusion in the entities' procurement practices. The requestor specifically seeks:

- (1) Access to and copies of all responses to the City of Austin and Capital Metro Business Utilization Survey;
- (2) Access to and copies of the complete text, transcript, notes, or other documentation of all anecdotal interviews conducted for the Disparity Study, including all questions asked and responses received; and
- (3) Transcripts of all public hearings held to receive anecdotal comments of discrimination for use in the Disparity Study.

You have not claimed any exceptions to disclosure. Rather, you state that the city will provide the information requested in item 3. With respect to items 1 and 2, you state that the only information the city has is contained in the report entitled "Minority Business Enterprise Utilization Report: A Disparity Study for the City of Austin and

Capital Metro."¹ Apparently, the consulting firm possesses a market survey and materials relating to interviews that are responsive to items 1 and 2. You state that the consulting firm will not provide this information on the basis that the information is not within the city's contractual right to obtain, and that the information is not "public information" under section 552.021(a)(2) of the act. You rely upon Open Records Decision No. 445 (1986).

In Open Records Decision No. 445, this office considered whether a city was obligated to release information, including interview notes, obtained by a private consultant in preparing a written report regarding the city's police department. "Under the terms of the contract [between the city and the consulting firm], [the consulting firm] was to prepare and turn over to the city . . . a comprehensive written report of their findings and recommendations. The consulting firm fulfilled its contractual obligations by making the report available to the city." Open Records Decision No. 445 at 1. Because the city was not contractually entitled to the requested information, this office concluded that the information was not public information subject to disclosure under the act, stating, "We emphasize that our holding is a narrow one confined to the particular facts of this case." *Id.* at 2.

We believe that the facts of this situation are significantly different than those at issue in Open Records Decision No. 445. We have reviewed the contract between the city, Capital Metro, and the consulting firm. Pursuant to section VII, paragraph A of the contract, the consulting firm agreed to furnish the city with a "copy, in media acceptable to the City, of all data, calculations, reports, memoranda, and all other documents, work papers and instruments of any type or nature which have been prepared by Consultant or by subconsultants in rendering Services hereunder." We fail to see how this provision does not provide the city with a right of access to the requested information. Furthermore, we note that the letter from the consulting firm refusing to release the information to the city does not assert that the city has no contractual right to the information. Rather, it states that it refuses to release the information to the city because the persons interviewed and surveyed were promised confidentiality.²

Based upon the information presented to us, we conclude that the city has not established that it has no contractual right to the requested information, and that the information is clearly public information subject to public disclosure under section 552.021(a)(2) of the act. Given that you submitted none of the requested information, we

¹We assume that the city has released this document to the requestor.

²Generally, a governmental body's promise to keep information confidential is not a basis for excepting information from required public disclosure unless the governmental body has express statutory authority to make such a promise. See Attorney General Opinion JM-672 (1987) at 2; Open Records Decision Nos. 594 (1991) at 3; 514 (1988) at 1.

cannot determine whether any of the requested information is excepted from required public disclosure under the act. We do note, however, that due to the city's failure to raise any exceptions to required public disclosure within ten days of receiving the request, the information is presumptively open. Only a compelling interest can overcome that presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). If you believe that there is a compelling reason to withhold any of the requested information, you may submit it to this office for a ruling if you do so within ten days of the date of this letter. You must release any other requested information immediately.

Because case law and prior published open records decisions resolve your request, we address it with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/rho

Ref.: ID# 24098

Enclosures: Submitted documents

cc: Mr. Kenneth W. Painter
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(w/o enclosures)