



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

Mr. John Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR95-526

Dear Mr. Schneider:

You have asked 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# 24863.

The City of Pasadena (the "city") received a request for information about a possible plan to privatize the city's wastewater treatment plants and the proposals submitted to the city in regard to that plan. You requested a decision from this office by letter dated February 16, 1994, in which you contended that the requested information was excepted from disclosure under sections 552.106 and 552.110 of the Government Code.

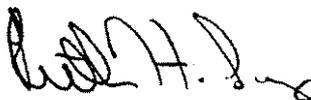
However, you did not timely submit the documents at issue to this office for review, as required by sections 552.301, 552.302, and 552.303 of the Government Code. By letter dated February 10, 1995, we informed you that if you did not provide the documents at issue to this office within seven days of the date of the letter, your discretionary exceptions to disclosure would be deemed waived and the information presumed public. See Gov't Code § 552.302; Open Records Decision No. 319 (1982) at 1-2. To date, you have not provided the documents at issue. The section 552.302 presumption of openness can only be overcome by a compelling demonstration that the information should not be made public, such as when a third party's privacy or property interests are at stake. Open Records Decision No. 150 (1977) at 2. No such compelling interests were raised in regard to your section 552.106 argument.

However, your argument that section 552.110 is applicable implicated third party interests. Therefore, pursuant to section 552.305, this office notified representatives of Brown and Root; Gulf Coast Waste Disposal Authority, Inc.; PSG; and Legg, Mason, Wood, Walker, Inc. that we had received your request for an open records decision regarding the privatization of the wastewater-treatment plant. In our letter to the notified parties, this office requested an explanation as to why portions of the proposals were excepted from public disclosure under section 552.110, with the caveat that their failure to provide such an explanation within a reasonable time would result in this office instructing you to disclose the information.

Please note that this office tried to notify Metcalf and Eddy Services at the three separate addresses that you provided. The addresses were as follows: Metcalf & Eddy Services, Inc., 2828 Genoa-Red Bluff Road, Houston, Texas 77034; Metcalf and Eddy, 5600 Northwest Central, Houston, Texas 77092; and Metcalf & Eddy Services, Inc., 1201 Peachtree, N.E. 400 Colony Square, Suite 1101, Atlanta, Georgia 30361. The attempts to notify this company were unsuccessful.

More than fourteen days have elapsed since this office issued the notice, but the notified parties have failed to provide this office with any explanation as to why the requested documents should not be released. Consequently, we have no basis for applying the section 552.110 exception to required public disclosure to this information. See Open Records Decision No. 552 (1990). Since the city has waived its discretionary exceptions and neither you nor the notified parties have contended to this office that the requested information is otherwise confidential, you should release the information at this time. If you have any questions regarding this letter, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID# 24863

cc: Mr. Richard C. Shaw
Executive Director
American Federation of State,
County and Municipal Employees
P.O. Box 230242
Houston, Texas 77223-0242

Mr. Robert Renbarger
Ford & Ferraro
2000 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4286

Mr. Gene Nethery
Brown & Root
4100 Clinton Drive
Houston, Texas 77020

PSG
14950 Heathrow Forest Parkway, Suite 200
Houston, Texas 77032-38542

Mr. Gerry Dunn
Gulf Coast Waste Disposal Authority
910 Bay Area Blvd.
Houston, Texas 77058

Legg, Mason, Wood, Walker, Inc.
1111 Bagby, Suite 1400
Houston, Texas 77002