



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Mr. Madison Jechow
Bickerstaff, Heath, Smiley, Pollan,
Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0131

Dear Mr. Jechow:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112254.

The Capital Metropolitan Transportation Authority ("Capital Metro") received three requests for information. You assert that Mr. Ire Turner's personnel file is excepted from required public disclosure based on sections 552.101, 552.102, 552.103, 552.108 and 552.117 of the Government Code.¹ You also assert that information submitted to Capital Metro by Prism Development, Inc. and Environtrans Solutions, Inc. is excepted from required public disclosure based on section 552.127 of the Government Code.

Section 552.108 of the Government Code reads in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime.

¹We assume you have released to the requestor the requested severance package, if such exists.

Section 552.108 applies to records "held by a law enforcement agency or prosecutor." An entity that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 excepts records in its possession from public disclosure. For example, section 552.108 applies to documentary evidence in a pending police case when such evidence is in the custody of a non-law enforcement agency. *See* Open Records Decision No. 272 (1981). Likewise, when an investigatory file is open, and there exists a reasonable probability of criminal prosecution, a non-law enforcement agency may claim section 552.108 as to that file. *See* Attorney General Opinion MW-575 (1982).

We have reviewed your arguments and find that you have established that the release of the file would interfere with the detection, investigation and prosecution of crime. We conclude that Capital Metro may withhold from disclosure the requested personnel file based on section 552.108(a) at this time.

Section 552.127 of the Government Code² reads in pertinent part as follows:

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) [to certain governmental entities under certain circumstances]

(2) with the express written permission of the applicant or the applicant's agent.

You indicate that Prism Development, Inc. and Environtrans Solutions, Inc. submitted to Capital Metro the information at issue as part of their application for certification as a disadvantaged business entity. You inform us that Prism Development, Inc. has asked Capital Metro not to release its certification documentation. You have not demonstrated that Environtrans Solutions, Inc. has given express written permission for the release of the information. Accordingly, we conclude that Capital Metro must withhold from disclosure the two companies' certification documentation based on section 552.127 of the Government Code.

²The Open Records Act, chapter 552 of the Government Code, now contains three section 552.127's. The cited provision is the text of section 552.127 as added by Act of May 20, 1997, 75th Leg., R.S. ch. 1227, 1997 Tex. Sess. Law Serv. 4692 (Vernon).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 112254

Enclosures: Submitted documents

cc: Ms. Debbie Hiott
Mr. Laylan Copelin
Austin American Statesman
P.O. Box 670
Austin, Texas 78767-0670
(w/o enclosures)

Mr. Mike Rosen
General Assignment Reporter
119 East 10th Street
Austin, Texas 78701
(w/o enclosures)