



May 11, 2000

Ms. Barbara Jo Martin
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR2000-1853

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135082.

The Port of Houston Authority (the "authority") received a request for information as follows:

1. The authority's request for bids for the purchase of old World Trade Center property.
2. Bids received by the authority from prospective buyers of the property.
3. Minutes from the meeting in which the authority approved the bid from H.O. Holdings.
4. Copy of the agreement between the authority and H.O. Holdings.
5. Any correspondence between the authority and H.O. Holdings/Palladio Development.
6. Any correspondence between the authority and the Harris County Houston Sports Authority pertaining to the sale and development of the old World Trade Center property.
7. Any correspondence, staff reports and other documents from the past three years related to the sale and development of the old World Trade Center property.

You state that you have made available to the requestor the information responsive to the above-stated items 1 through 6, as well as some of the information responsive to item 7. You

have provided for our review additional information that is responsive to item 7, marked by you as exhibits "B" and "C." You assert that this information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the information in exhibit "B," in its entirety, is excepted from disclosure by the attorney-client privilege as incorporated into section 552.107(1) of the Government Code. Section 552.107(1) excepts information from disclosure if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, or the Texas Disciplinary Rules of Professional Conduct. *See* Gov't Code § 552.107(1). This exception does not apply to all client information held by a governmental body's attorney; rather, it excepts from public disclosure only "privileged information," i.e. communications made to the attorney *in confidence* and in furtherance of rendering professional legal services or that reveal the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1(1991), 574 at 3 (1990), 462 at 9-11(1987). Information gathered by an attorney as a fact-finder, purely factual information, and the factual recounting of events including the documentation of calls made, meetings attended, and memos sent, are not excepted from disclosure by section 552.107(1). Open Records Decision No. 574(1990). Section 552.107(1) may except from disclosure notes in an attorney's client file if they contain confidences of the client or reveal the opinions, advice, or recommendations that have been made or will be made to the client or associated attorneys. Open Records Decision No. 574 at 6 (1990). We agree that one of the documents in exhibit "B," a legal opinion memorandum which we have marked, as well as a handwritten notation which we have also marked, are excepted from disclosure by section 552.107(1). As to the remaining information in exhibit "B," although the information is indicated to have been communicated between attorneys, we find none of this information consists of opinion, advice or recommendation from an attorney, nor have you demonstrated that any of this information, if released, would reveal a client confidence. The information includes published newspaper articles, which are in the public domain and thus not protected by the attorney-client privilege. The information also includes published court decisions. While you aver that "the loose copies of cases . . . reveal the thought process and reasoning of the attorneys in analyzing legal issues," we do not agree that the release of the published court decisions would reveal the opinion, advice, or recommendation of the attorney. *See also* Gov't Code § 552.022(17) (information contained in a public court record not excepted from required disclosure unless expressly confidential under other law). Thus, except for the information we have marked, we conclude that you must release the remaining information in exhibit "B."

As to exhibit "C," you aver the information is excepted from disclosure by section 552.101 in conjunction with the common law right of privacy. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This provision encompasses the common law right of privacy. The common law right of privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a

reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note, however, that the information at issue consists of compilations of information, primarily financial, of four third party corporations. Corporations do not have a right to privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), cited in *Rosen v. Matthews Const. Co.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). We therefore conclude none of the information in exhibit "C" is excepted from required disclosure by section 552.101 in conjunction with the common law right of privacy.

You have also notified each of the four third party corporations of the request by a letter dated March 8, 2000 in compliance with section 552.305 of the Government Code. *See* Gov't Code § 552.305(b) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). None of the third parties responded to the notice; therefore, we have no basis to conclude that any of the information in exhibit "C" is excepted from disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

You state, and the information itself indicates, that the information in exhibit "C" is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so 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 a copyright infringement suit. *See* Open Records Decision No. 550 at 7 (1990). Because we conclude that the information in exhibit "C" is not excepted from required public disclosure, you must allow the requestor inspection of exhibit "C."

In summary, you may withhold the information we have marked in exhibit "B" pursuant to section 552.107(1). You must release to the requestor the remaining information in exhibit "B." You must also allow the requestor access to the information in exhibit "C."

This letter ruling is limited to the particular records 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 records or any other circumstances.

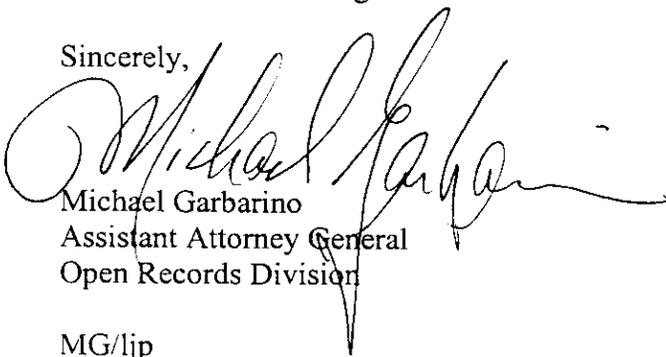
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135082

Encl. Submitted documents

cc: Mr. John Suval
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(w/o