



August 29, 2000

Ms. Betty Jo Harris  
City Secretary  
City of Sabinal  
P. O. Box 838  
Sabinal, Texas 78881

OR2000-3340

Dear Ms. Harris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138623.

The City of Sabinal (the "city") received a request for a copy of a specific contract between the city and a communications company and a copy of any local ordinances regulating telecommunications and the city's right-of-ways. You claim that the requested contract may be exempted from disclosure under section 552.305 of the Government Code because the privacy or property interest of a third party may be at stake.<sup>1</sup> We have considered your argument and reviewed the submitted information.

Section 552.305 of the Government Code is not an exception to required public disclosure. Rather, it is a provision that allows a third party whose privacy or proprietary interests may be affected by a request for information an opportunity to raise on its own behalf exceptions to required public disclosure. Section 552.305 provides in relevant part:

(a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

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<sup>1</sup>As you do not question whether the requested ordinances are exempted from public disclosure, we assume the city has released the ordinances to the requestor. If not, the city must do so at this time. See Gov't Code §§ 552.301, .302.

(d) If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. . . .

Neither you nor any third party has raised any exceptions to required public disclosure in regard to the requested contract. Therefore, we have no basis for finding the contract excepted from required public disclosure. *See* Gov't Code §§ 552.301, .302.<sup>2</sup> Accordingly, the city must release the requested contract.<sup>3</sup>

Finally, you mention that this is the city's first request for an attorney general decision under the Public Information Act, and that you are unsure of the process. In order to provide guidance for future requests for decisions, we have enclosed this office's Public Information Handbook. In addition, we encourage you to call our office's toll-free hotline at (877) 673-6839 and visit our web site at [www.oag.state.tx.us](http://www.oag.state.tx.us) for additional guidance.

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).

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<sup>2</sup>We note your concern that the contract at issue contains a clause that seems to require confidentiality. However, governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 283 (1981); 207 (1978), 133 (1976). Furthermore, contracts involving governmental bodies generally must be released under the Public Information Act. *See* Gov't Code § 552.022(a)(3) (contracts with governmental body expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency); *see generally* Freedom of Information Act Guide & Privacy Act Overview at 136-138, 140-141, 151-152 (1995) (disclosure of prices is cost of doing business with government); *cf.* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors).

<sup>3</sup>The submitted contract incorporates by reference an "Exhibit A." Although you did not submit Exhibit A to this office for our review, it must be released to the requestor as well as it appears to be part of the requested information and you have raised no exception to its disclosure. *See* Gov't Code §§ 552.301, .302.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\er

Ref: ID# 138623

Encl: Submitted documents

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