



February 16, 2001

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Drawer 619428  
DFW Airport, Texas 75261-9428

OR2001-0601

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144293.

The Dallas/Fort Worth International Airport Board (the "board") received a request for the contracts numbered 8500113 and 8500114 between the board and DaimlerChrysler Rail Systems (North America), Inc. d/b/a Adtranz Automated Transit Systems ("Adtranz") pertaining to an automated people mover system. You have submitted for our review the "Contract Agreement" numbered 8500113, which incorporates by reference the submitted volumes 1 through 4, respectively titled "General Provisions," "Additional Site Provisions," "Special Provisions," and "Technical Provisions." You state that Adtranz "objects to disclosure of its confidential and proprietary information contained within the contract" pursuant to sections 552.101 and 552.110 of the Government Code.<sup>1</sup> You make no arguments in support of these exceptions, but the board notified Adtranz of the request pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (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). Through its legal counsel, Adtranz responded to the notice and states that Adtranz does not object to the release of the submitted documents. We therefore conclude the board must release to the requestor, in their entirety, the documents submitted to this office for review.

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<sup>1</sup>This statement is evidently based on a December 8, 2000 letter from Adtranz's legal counsel to the board, which you submitted for our review.

In correspondence dated December 11, 2000, you state that the contract numbered 850014 "has not been executed and as such the board seeks to withhold the documents" until after execution of the contract, pursuant to section 552.104 of the Government Code. However, the board did not submit for our review the information responsive to the request for the contract numbered 8500114. Among other requirements, section 552.301(e) of the Government Code requires the board to submit to this office copies or representative samples of the information requested, no later than fifteen business day after the date of receiving the request. Gov't Code § 552.301(e)(1)(D). Thus, with respect to the request for the contract numbered 8500114, you did not request a decision of this office in accordance with the requirements of section 552.301. Section 552.302 of the Government Code provides that if a governmental body does not request a decision of this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Section 552.104 is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public sufficient to overcome the section 552.302 presumption of openness.<sup>2</sup> Accordingly, the board must release to the requestor the contract numbered 8500114.<sup>3</sup>

In summary, the board must release to the requestor, in its entirety, the information responsive to the request.

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

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<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

<sup>3</sup>The December 8, 2000 letter from Adtranz's legal counsel to the board, objecting to the release of Adtranz's proprietary information, apparently also pertains to the contract numbered 8500114. Sections 552.101 and 552.110 of the Government Code can provide a compelling reason to withhold information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.* Open Records Decision No. 150 (1977). However, you have not submitted the contract numbered 8500114 for our review, so we have no basis for concluding that this information is protected by section 552.101 or 552.110. *See* Gov't Code § 552.352. If you believe the information is confidential and cannot lawfully be released, you must challenge this decision in court as outlined below.

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).

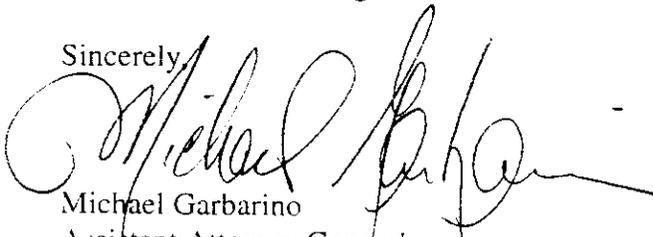
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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/seg

Ref: ID# 144293

Encl. Submitted documents

cc: Mr. Steven T. Ramos  
Strasburger & Price  
901 Main Street, Suite 4300  
Dallas, Texas 75202-3794  
(w/o enclosures)

Mr. Glen A. Hodges  
Winstead, Sechrest & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
(w/o enclosures)

Mr. Edward A. Gordon  
Senior Vice President  
Adtranz Automated Transit Systems  
1501 Lebanon Church Rd.  
Pittsburgh, PA 15236-1491  
(w/o enclosures)