



September 17, 2001

Mr. Stephan L. Sheets  
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309 East Main Street  
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OR2001-4147

Dear Mr. Sheets:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152027.

The City of Round Rock (the "city"), which you represent, received a request for "[a]ll correspondence during the past year between the [city] and AMD and any representatives of AMD concerning the company's possible construction of a facility in the Round Rock area." You inform us that the city will release a portion of the requested information to the requestor, but argue that the remaining portion of the requested information is excepted from disclosure under section 552.131(b) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or

by a governmental body, except as provided by [s]ection 552.108 . . .” Gov’t Code § 552.022(a)(1). We find that a portion of the information you have submitted is subject to section 552.022(a)(1). Therefore, as prescribed by section 552.022, this information, which we have marked, must be released to the requestor unless it is confidential under other law.

You argue that the submitted information is excepted pursuant to section 552.131(b). Section 552.131(b) is a discretionary exception designed to protect the interests of the governmental body and not “other law” for purposes of section 552.022.<sup>1</sup> Moreover, we know of no other law that would make the marked information confidential. Accordingly, under section 552.022(a)(1), the city must release the information that we have marked.

We will next address your section 552.131(b) argument for the remaining information. Section 552.131(b) states that “information about a financial or other incentive being offered to [a] business prospect by the governmental body or by another person” is excepted from required public disclosure “[u]nless and until an agreement is made with the business prospect.” You inform us that the city has not yet entered into an agreement with the business prospect. You further argue that “[a]ll of the items of correspondence in question contain reference to and information about financial and other incentives being offered to the business prospect by” the city. Upon review of the information not subject to section 552.022(a)(1), we conclude that the city may withhold all of this information pursuant to section 552.131(b) of the Government Code, with the exception of one document that we have marked. This document is to the city from a third party and does not reflect financial or other incentives being offered to the business prospect by the city.

To summarize, a portion of the submitted information must be released pursuant to section 552.022(a)(1). The remaining submitted information may be withheld under section 552.131(b), with the exception of one document that we have marked.

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

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<sup>1</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)), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute “other law” that makes information confidential.

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 A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref.: ID# 152027

Enc.: Submitted documents

c: Mr. Tony Plohetski  
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(w/o enclosures)