OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
1201 Louisiana, 16th Floor
Houston, Texas 77002

OR2003-0572

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175624.

The Metropolitan Transit Authority of Harris County (the "authority") received a written request for 1) "complete report of all sections of METRO's internal audit for FTA funded construction projects conducted in the Spring of 2002 by the Audit Division" (the "audit reports") and 2) the "name, sex, ethnicity, salary, title, and dates of employment of" various authority employees. You contend that the requested information is excepted from required disclosure pursuant to section 552.103 of the Government Code.

We note, however, that the release of the requested information is governed by section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

> (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 not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a *completed report, audit*, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]
> >
> > (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(1), (2) (emphasis added). The information you submitted to this office as being responsive to the requested audit reports is subject to section 552.022(a)(1), and all of the requested personnel information is subject to section 552.022(a)(2). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.); Open Records Decision No. 542 at 4 (1990) (governmental body may waive section 552.103). Therefore, the authority may withhold the requested information only to the extent it is made confidential under other law. You do not argue, and it is not apparent to this office, that any of the requested information is made confidential under other law. We therefore conclude that the requested information, including all attachments to the audit reports, must be released to the requestor in its entirety in accordance with sections 552.022(a)(1) and 552.022(a)(2) of the Government Code.

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).

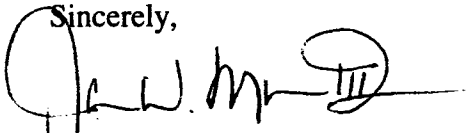
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/sdk

Ref: ID# 175624

Enc: Submitted documents

c: Mr. Ed Blakemore
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(w/o enclosures)