



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 10, 2003

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8845

OR2003-0868

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176295.

The City of Austin (the "city") received two requests from the same requestor for information relating to the Department of Small and Minority Business Resources. The first request asks for a list of companies that have been certified as a minority business enterprise or woman-owned business enterprise since October 1999, and the amount of money from city contracts that each company has received, per city fiscal year, since October 1999. The second request asks for:

1. A list of all contracts that have been found to be missing from the City of Austin Department of Small & Minority Business Resources since October 1, 2002. Please include the names of contractors, sub-contractors, and vendors included in those contracts, as well as the amount of money each was to receive.
2. The cumulative amount of city contracts that were reviewed or certified by the Department of Small & Minority Business [Resources] in Fiscal Year 2002.

You state that the city has not found any information responsive to part 1 of the second request.<sup>1</sup> You claim that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the responsive information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to pending investigations into allegations of criminal wrongdoing relating to contracts for city business. You further state, and provide documentation showing, that the allegations are being investigated by the Austin Police Department, the Travis County District Attorney, and federal authorities. Based upon your representations and our review of the information you have submitted, we determine that the release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we determine that the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.<sup>2</sup> We note that although section 552.108(a)(1) authorizes you to withhold the information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See Gov’t Code* § 552.007.

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> The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> As we are able to make a determination under section 552.108(a)(1) of the Government Code, we do not address your claim under section 552.108(b)(1) of the Government Code.

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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 176295

Enc: Submitted documents

c: Mr. Stephen Scheibal  
Austin American-Statesman  
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(w/o enclosures)