



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 12, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2003-0938

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176469.

The City of Waco (the "city") received a written request for "the complete City of Waco Maintenance for repair and work orders on the street lights, street, and street signs" at a particular location.¹ You have submitted to this office as responsive to the request certain "Signs and Markings Daily Reports," a "Daily Materials Usage Report," and certain contract documents pertaining to "Slurry Seal and Micro-Surfacing at Various Locations 2001-1." You contend that these documents are excepted from required disclosure pursuant to section 552.103 of the Government Code.

We note, however, that the release of the submitted records is governed by section 552.022 of the Government Code. Section 552.022 provides in pertinent 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 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]

...

¹We note that the same individual, in other correspondence to the city, has requested additional information. Because you do not contend that the other requested information is excepted from public disclosure, we assume the city has provided this other information to the requestor. If it has not, it must do so at this time to the extent that information exists. See Gov't Code §§ 552.301, .302.

(3) information in an account, voucher, or *contract* relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3) (emphasis added). Consequently, the city must release the submitted records unless they are expressly made confidential under other law.² As noted above, you contend that the submitted records are excepted from disclosure pursuant to section 552.103 of the Government Code. 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). Thus none of the submitted information may be withheld on the basis of section 552.103. Consequently, the city may withhold the submitted records only to the extent they are made confidential under other law for purposes of section 552.101 of the Government Code.

After reviewing the submitted records, this office could not identify any information that is made confidential by law. The city therefore must release the submitted information in its entirety.

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

² We note that you have not raised section 552.108 for the submitted reports. See Gov't Code § 552.022(a)(1).

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/lmt

Ref: ID# 176469

Enc: Submitted documents

c: Mr. Michael A. Zimmerman
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(w/o enclosures)