



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2003

Ms. Janie Bates
Executive Director
Texoma Workforce Development Board
5904 Texoma Parkway
Sherman, Texas 75090

OR2003-5941

Dear Ms. Bates:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186639.

The Texoma Workforce Development Board (the "board") received a request for contracts between the board and 1) any entity that operates the career center and 2) any entity that acts as the board's fiscal agent. The request also seeks correspondence between the board and the Texas Workforce Commission approving any such contracts. You state that "the contract with the individual who is the managing director of our workforce systems and the contract with the Professional Employer Organization contain information that is negotiated and considered proprietary by the contractors."

Initially, we must address the board's obligations under Chapter 552 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

Section 552.305 of the Government Code lists additional requirements that apply when a governmental body receives a request that seeks information that may involve a person's privacy or property interests. When the governmental body receives such a request, it may decline to release the information in order to request a decision from this office. Gov't Code § 552.305(a). Within ten business days of receiving the request, the governmental body is required to make a good faith attempt to provide written notice to the affected person of the request for the attorney general decision. *Id.* § 552.305(d)(1). The notice must include a copy of the written request for the information and a statement, in the form prescribed by this office, informing the person that he is entitled to submit, within ten business days of receiving the notice, each reason he has as to why the information should be withheld and a written explanation in support of that reason. *Id.* § 552.305(d)(2). Because a governmental body may request a ruling in such circumstances solely to protect the third party's interests, the governmental body is not required to submit its own reasons why the information should be withheld or released. *Id.* § 552.305(c).

In this instance, the board received the request on June 16, 2003. On June 18, the board requested a ruling from this office. In its ruling request the board did not raise any exceptions to disclosure on its own behalf but indicated that the requested information may involve third parties' property interests. As of the date of this ruling, we have received no further correspondence from the board, and no copy of the specific information requested or representative samples has been submitted to this office. Thus, the board has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

You indicate that release of the requested information would implicate third party rights. However, we have received no correspondence from any third party objecting to the release of the requested information. *See* Gov't Code § 552.305(d)(2) (third party must submit its reasons why information should be withheld within ten business days of receiving notice of ruling). Thus, we have no basis for concluding that any portion of the requested records constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested

information would cause that party substantial competitive harm); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the requested information must be released.

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).

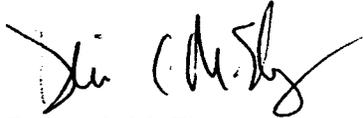
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with a large initial "D" and "M".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 186639

c: Mr. Layne Acker
816 Congress Avenue, Suite 1265
Austin, Texas 78701