



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 31, 2003

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

OR2003-9420

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 193439.

The City of Austin (the "city") received a request for a list of contracts between the city and a specific individual or company, as well as subcontracts between the city's contractors and the same individual or company. You claim that 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 representative sample of information.¹ Initially, we note that the submitted documents contain information that is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) . . . [T]he 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 We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

The sample information you have submitted consists of a report of estimated expenditures for subcontractor suppliers as well as a construction contract estimate. These documents fall within the category of public information described in section 552.022(a)(5) and therefore may not be withheld absent other law making them confidential.

You claim that section 552.108 of the Government Code excepts the requested information from disclosure. Section 552.108, which concerns certain law enforcement and prosecutorial information, provides a discretionary exception to disclosure that protects the governmental body's interests and therefore does not constitute other law that makes information expressly confidential for purposes of section 552.022(a). *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989)(discretionary exceptions in general). Thus, section 552.108 is inapplicable to the submitted sample and the information must be released to the requestor.

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,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/lmt

Ref: ID# 193439

Enc. Submitted documents

c: Jo Clifton
P. O. Box 3224
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(w/o enclosures)