



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 13, 2004

Ms. Alice Caruso  
Assistant Disclosure Officer  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2004-0266

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194125.

The Texas Workforce Commission (the "commission") received a request for copies of the winning proposals and contracts for Agency Requisition No. PPRD 02-03 and a list of proposers, including names, addresses, and phone numbers. You state that some of the requested information has been release. Although you take no position with respect to the remaining requested information, you claim that the release of this information may raise the privacy and proprietary interests of Foundation Communities ("Foundation"), Alliance for Multicultural Community Services ("Alliance"), and Covenant Community Capital Corporation ("Covenant"). You state, and provide documentation showing, that you have notified Foundation, Alliance, and Covenant of the request and of their right to submit arguments to this office as to why information pertaining to each third party should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received correspondence from Covenant and Alliance. We have reviewed their arguments and the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a

decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the commission received the present request on September 8, 2003. You did not request a decision from this office until October 30, 2003. Thus, the commission has failed to comply with section 552.301 of the Government Code.

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code 552.302; see also 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). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. *See Open Records Decision No. 150 at 2 (1977)*. Because third party interests are at stake in this instance, we will address Covenant's and Alliance's arguments.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, Foundation has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Thus, we have no basis to conclude that Foundation has a protected proprietary interest in any of the submitted information. *See Gov't Code § 551.110(b)* (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, the submitted information related to Foundation must be released.

Both Covenant and Alliance argue that the requested information, or portions thereof, is excepted from disclosure pursuant to section 552.104 of the Government Code. We note, however, that section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See Open Records Decision No. 592 at 8-9 (1991)*. Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to its interests in a particular competitive situation. *See Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986)*. The commission has not argued that the release of any portion of the requested information would harm its interests in a particular competitive situation under section 552.104. Accordingly, because the commission does not raise

section 552.104, none of the submitted information is excepted under section 552.104 of the Government Code. Consequently, the commission must release the submitted information 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 194125

Enc. Submitted documents

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