



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2004

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2004-9178

Dear Ms. Villarreal-Reyna:

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# 211809.

The Texas Department of Insurance (the "department") received a request for information regarding a request for proposals for a special deputy receiver, including the four best bids submitted and the scoring results. The department takes no position with regard to the public availability of the requested information. You believe, however, that some of the information implicates the proprietary interests of one of the bidders. You notified Interim Solutions for Businesses, Inc. ("Interim Solutions") of this request for the information in question and of its right to submit arguments to this office as to why the information should not be released.¹ You also submitted the information, which we have reviewed. We assume that the department has released any other information that is responsive to this request, to the extent that such information existed when the department received the request. If not, then the department must release any such information at this time.² We note that the Act

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

does not require you to release information that did not exist when the department received this request or to create responsive information.³

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Interim Solutions. Thus, Interim Solutions has not shown that any of the submitted information is proprietary for purposes of section 552.110 of Government Code. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). As there has been no demonstration that any of the submitted information is excepted from disclosure, the 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).

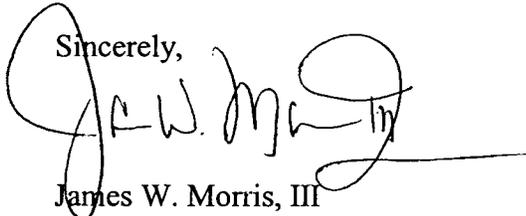
³*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 211809

Enc: Submitted documents

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