



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2005

Ms. Reta Brooks
Executive Director
Public Transit Services
P.O. Box 1055
Mineral Wells, Texas 76068

OR2005-06750

Dear Ms. Brooks:

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# 229055.

Public Transit Services ("PTS") received a request for information pertaining to PTS's operations in Parker County. You claim that the requested information is excepted from disclosure under sections 552.103, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claim.

We note that you have not submitted any information responsive to the present request. Pursuant to section 552.301(e) of the Government Code, a governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general 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. *See Gov't Code* § 552.301(a), (e). In this instance, you have not submitted any information responsive to this request. Thus, PTS failed to comply with the procedural requirements of section 552.301. PTS's failure to submit the responsive information or a representative sample of the responsive information results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797

S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, PTS must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Sections 552.103 and 552.104 are discretionary under the Act and are thus waived by a governmental body's failure to comply with section 552.301. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103); 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Section 552.110 of the Government Code can provide a compelling reason to overcome the presumption of openness. However, as you have not submitted responsive information, we have no basis for finding that the requested information is subject to section 552.110.¹ Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

¹PTS asserts that its responsive information is excepted from disclosure under section 552.110. However, this section only protects the interests of third parties, not the interests of a governmental body. Therefore, section 552.110 is not a proper exception for PTS to assert.

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); *Tex. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 229055

Enc. Submitted documents

c: Honorable Mark Riley
Parker County Judge's Office
One Courthouse Square
Weatherford, Texas 76086
(w/o enclosures)