



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Mr. Rodrigo Figueroa
Cox, Smith, Matthews, Inc.
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2005-11567

Dear Mr. Figueroa:

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# 238915.

The VIA Metropolitan Transit ("VIA"), which you represent, received a request for the sworn responses submitted by two members of VIA's board of trustees and VIA's president to the Texas Ethics Commission ("commission") in response to the sworn complaint filed by the requestor.¹ You claim that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

You claim that the submitted document "was produced by and for the [San Antonio-Bexar County Metropolitan Planning Organization (the "MPO")]" and is "not a VIA document." We note that MPO also received a request for the identical information that is at issue in the present request. This office issued the prior decision in response to MPO's request for a ruling. Based on VIA's representation that this is MPO's record and not VIA's, we conclude that VIA must rely on Open Records Letter No. 2005-11464 and withhold or release this information in accordance with Open Records Letter No. 2005-11464 (2005). *See generally*

¹You inform us that only one response was filed with the commission.

Open Records Decision No. 673 at 7-8 (2001) (listing elements of first type of previous determination under section 552.301(a)).

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).

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 Office of the Attorney General 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. 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 cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 238915

Enc. Submitted documents

c: Mr. Alfred Ehm
San Antonio Public Transit Users' Association, Inc.
170 Carousel Drive
San Antonio, Texas 78227-4712
(w/o enclosures)