



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 24, 2006

Ms. Kathryn V. Garner  
Andrews Kurth L.L.P.  
600 Travis, Suite 4200  
Houston, Texas 77002

OR2006-00771

Dear Ms. Garner:

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# 239925.

The Texas State Affordable Housing Corporation (the "corporation"), which you represent, received a request for a list of B Bond holders. You question whether the requested information is subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. In addition, you assert that the requested information is proprietary and pursuant to section 552.305 of the Government Code notified Wells Fargo Bank, N. A. ("Wells Fargo") of the request and its opportunity to submit comments to this office. *See* Gov't Code § 532.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered your arguments. We also have considered the correspondence and enclosures that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address your assertion that the requested information is not subject to the Act. The Act is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business... for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a)(2). Therefore,

information that is maintained by a private entity is subject to the Act to the extent a governmental body owns or has a right of access to the information at issue.

In this instance, you assert that the corporation “does not collect, assemble, or maintain” a list of the bondholders of the Series 2002B Bonds. We note that the corporation is the issuer of the bonds at issue. You state that the Depository Trust Corporation (“DTC”) is the repository of information related to the bonds issued by the corporation. You also state that although the corporation does not have a list of bondholders, it “could request a list from the [DTC] on behalf of the corporation.” We therefore conclude that the corporation has a right of access to the requested information that was collected and maintained for the corporation by the DTC. Accordingly, the requested information is subject to the Act.

Next, we must address the corporation’s obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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(e). You did not, however, submit to this office the specific information requested.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to submit to this office the information required in section 552.301(e) 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 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 Gov’t Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 of the Government Code is a discretionary exception and does not provide a compelling reason sufficient to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the requested information may be withheld under section 552.103. Section 552.101 can provide a compelling reason to overcome the presumption of openness; however, because you have not submitted the requested information for our review, we have no basis to find that section 552.101 is applicable to the requested information.

Furthermore, 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 information relating to that party should be withheld from public disclosure. *See*

Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Wells Fargo has not submitted to this office any reasons explaining why this information should not be released. Therefore, the interested third party has provided us with no basis to conclude that it has a protected proprietary interest in any of the requested information. *See, e.g.*, Gov't Code § 552.110(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. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, we have no choice but to order the requested information released pursuant to 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).

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 239925

Enc. Submitted documents

c: Mr. Donald F. Bowdren  
Tarpoonwood Lake Apartments  
715 East Lime Street  
Tarpon Springs, Florida 34689  
(w/o enclosures)