



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2006

Ms. Ingrid Hansen
General Counsel
Texas Building and Procurement Commission
P. O. Box 13047
Austin, Texas 78711

OR2006-05212

Dear Ms. Hansen:

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# 248971.

The Texas Building and Procurement Commission (the "commission") received a request for the following:

1. All records related to the acquisition or planned acquisition of carpet or cushion by the State Preservation Board and intended for installment in the Capitol building.
2. All records related to any type of modification or renovation planned or proposed for any part of the Capitol building, including living quarters, apartments or any other rooms meant to accommodate overnight guests or residents.

You state the commission has released some information but claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. Additionally, you inform us, and provide documentation showing, that you notified the State Preservation Board (the "board") of the request and its right to submit arguments to this office as to why its information should not be released. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

We must address the commission's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, 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. While the commission received the request for information on February 24, 2006, you did not provide the information required by section 552.301(e) until March 23, 2006. You do not inform us that the commission was closed for any of the business days between February 24 and March 23. Consequently, the commission failed to comply with the procedural requirements mandated by section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.111 of the Government Code is a discretionary exception to disclosure, and therefore the commission's claim under that exception does not provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive section 552.111). Accordingly, the commission may not withhold any of the submitted information pursuant to section 552.111. Furthermore, as of the date of this letter, this office has not received comments from the board explaining how the release of the submitted information will affect its interests. Accordingly, the commission may not withhold any of the submitted information on the basis of any interest the board may have in the information. Consequently, as the commission claims no further exceptions to disclosure, the submitted information must be released 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, 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 248971

Enc. Submitted documents

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