



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2007

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2007-01680

Dear Ms. Alexander:

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# 271172.

The Department of Transportation (the "department") received a request for "the winning ETC proposal, scoring matrices and any evaluation comments pertaining to the award for IFB B442006022637000, Houston Household Surveys." You make no arguments and take no position as to whether the submitted proposal is excepted from disclosure. Instead, you state that release of the requested proposal may implicate the proprietary interests of the ETC Institute ("ETC"). Pursuant to section 552.305 of the Government Code, you have notified ETC of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted proposal.

Initially, we note that you have not submitted the requested scoring matrices and evaluation comments for our review. We therefore assume you have released such information to the extent that it existed when the department received the request. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also*

Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Pursuant to section 552.305(d), an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice of the request for information to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, ETC has not submitted comments explaining why its information should be withheld from disclosure. Thus, ETC has failed to demonstrate that any of its information is proprietary for purposes of the Act. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the department may not withhold any of the submitted proposal on the basis of any proprietary interests that ETC may have in the information. Instead, the submitted proposal must be released to the requestor in its entirety.

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).

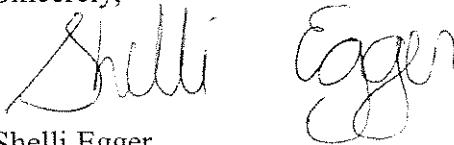
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "Shelli Egger". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/sdk

Ref: ID# 271172

Enc. Submitted documents

c: Mr. Grady Morris  
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(w/o enclosures)

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