



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2007

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2007-02133

Dear Mr. Toscano:

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# 271867.

The City of Dallas (the "city") received a request for the city's contract with a contractor and financial statements and other documents used by the city to evaluate the contractor's financial performance. You state that the city has no documents responsive to a portion of the request. We note that a governmental body is not required to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

You state that the requestor will be provided with a copy of the contract. Although you take no position with respect to the remaining information, you claim that its release may implicate a third party's proprietary interests. Pursuant to section 552.305(d) of the Government Code, you have notified the interested third party, the House of Blues, of the request and of its opportunity to submit comments to this office. See Gov't Code § 552.305 (permitting an interested third party to submit to the attorney general reasons why the requested information should not be released); Open Records Decision No. 542 (1990) (determining that the statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, you acknowledge failing to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. See Gov't Code § 552.301(b), (e). 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 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) (holding that a governmental body must make a compelling demonstration to overcome the presumption of openness pursuant to the statutory predecessor of section 552.302); Open Records Decision No. 319 (1982). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Because a third party's proprietary interests can provide a compelling reason to withhold information, we will consider whether any of the information at issue must be withheld to protect the third party's proprietary interests.

Under section 552.305, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why the 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 the House of Blues has failed to submit comments to this office explaining how the release of the information at issue would affect its proprietary interests. Thus, the House of Blues has failed to provide us with any basis to conclude that the requested information is proprietary for purposes of the Act. As we have received no arguments, the information at issue must be released.

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,



Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/eb

Ref: ID# 271867

Enc. Submitted documents

c: Mr. Randle Harwood
City of Fort Worth
City Manager's Office
1000 Throckmorton Street
Fort Worth, Texas 76102
(w/o enclosures)