



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2007

Ms. Julie Joe
Assistant County Attorney
Office of the County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2007-04832

Dear Ms. Joe:

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# 276996.

The Travis County Purchasing Office (the "TCPO") received a request for information pertaining to a specified bid, and a copy of "a previous contract with Transcor." You state that some of the responsive information will be released to the requestor. You further state that there is no responsive information with regard to a portion of the request.¹ You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. Further, you believe that the request may implicate the proprietary interests of an interested third party. Pursuant to section 552.305 of the Government Code, you state, and provide documentation showing, that you notified the interested third party, Transcor America, LLC, of TCPO's receipt of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released to the requestor. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments.

We note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, Transcor has not submitted to this office any reasons explaining why the requested information should not be released. Therefore, Transcor has failed to provide us with any basis to conclude that they have a protected proprietary interest in any of the submitted information, and none of the information may be withheld on that basis. *See 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)*.

The Act imposes a duty on a governmental body seeking an open records decision to submit the following information within fifteen business days of receiving the written 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. *Gov't Code § 552.301(e)*. As of the date of this decision, TCPO has not submitted a copy or representative samples of the information at issue, nor has it submitted arguments supporting its claim under section 552.108. Thus, TCPO failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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)*. Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exception you have raised. *See Open Records Decision No. 522 (1989) (discretionary exceptions in general)*. Accordingly, the requested information may not be withheld on the basis of section 552.108. Furthermore,

requested information may not be withheld on the basis of section 552.108. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under any mandatory exceptions. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. 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).

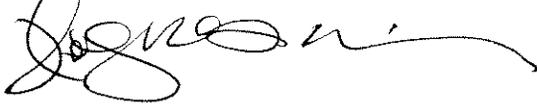
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "Holly R. Davis", with a long horizontal flourish extending to the right.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 276996

Enc. Submitted documents

c: Ms. Adrienne O'Keefe
Bates Investigations, Inc.
4131 Spicewood Springs Road #J2
Austin, Texas 78759
(w/o enclosures)

Ms. Elceria Smith
Transcor America, LLC
646 Melrose Avenue
Nashville, Tennessee 37211
(w/o enclosures)