



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2007

Ms. Yushan Chang
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-05354

Dear Ms. Chang:

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# 277827.

The Public Works and Engineering Department of the City of Houston (the "department") received a request for a copy of plans and drawings for 2200 West Loop South. Although you take no position with respect to the requested information, you state that the request may implicate the proprietary interests of a named third party. Pursuant to section 552.305(d) of the Government Code, you have notified the named third party of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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).

Initially, we note that you have not submitted the any of the requested information for our review. You state that *this information* is maintained by the department, which utilizes a third party for storage of information, including the requested information at issue. 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: (1) by a governmental body; or (2) for a governmental body

and the governmental body owns the information or has a right of access to it.” See Gov’t Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information and it relates to the transaction of official business. See Open Records Decision Nos. 462 (1987), 445 (1986); cf. Open Records Decision No. 499 (1988).

In this case, through communications with this office, you have stated that the department has access to the information, but that the third party storing the records has failed to provide the department with the information at issue. We note that the administrative inconvenience involved in responding to a request for information does not excuse a failure to comply with the Act. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (1976), cert. denied, 430 U.S. 931 (1977) (cost or difficulty of complying with the Act does not determine availability of information); Open Records Decision No. 497 (1988). Because the department has a right of access to the information and it relates to the transaction of official department business, we conclude that such information is subject to disclosure under the Act. Accordingly, we address the department’s obligations under the Act.

Initially, you acknowledge that the department failed 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) (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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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, this office has received no correspondence from the named third party. Thus, as there has been no demonstration that any of the requested information that relates to the named third party is confidential or proprietary for the purposes of the Act, the department may not withhold any of that information under section 552.101 or section 552.110 of the Government Code. See Gov’t Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (if governmental body takes no position under Gov’t Code § 552.110(a), third party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (to prevent disclosure of commercial

or financial information under Gov't Code § 552.110(b), party must show by specific factual evidence, not conclusory or generalized allegations, that release of information would cause that party substantial competitive harm). Further, because you have not submitted any of the responsive information, we have no basis for finding any of the responsive information confidential. Accordingly, the requested information must be released pursuant to section 552.302 of the Government Code.

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 that reads "Jordan Johnson". The signature is written in a cursive, flowing style.

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/eb

Ref: ID# 277827

Enc. Submitted documents

c: Ms. Sandy Crego
2200 West Loop South
Houston, Texas 77027
(w/o enclosures)