



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2007

Mr. Miguelangel Matos
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2007-06362

Dear Mr. Matos:

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# 279145.

It appears that the San Antonio Water System (the "system"), which you represent, received a request for information pertaining to water and sewer service proposals for specified counties.¹ You state that some of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. You also claim that the submitted information may contain the proprietary information of interested third parties. You state, and provide documentation showing, that you have notified Brown Engineering Company ("Brown"); Denham-Ramones Engineering and Associates, Inc. ("Denham"); Kimley-Horn and Associates, Inc. ("Kimley"); Los Reyes, Inc. ("Los Reyes"); and Shadow Creek Canyon, Ltd. ("Shadow Creek") of the request and of their opportunity to submit comments 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under the Act in certain

¹We note that the submitted clarification request references items sought from the original February 2, 2007 request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As you have not submitted the original request for our review, we are unable to determine what other information has been requested.

circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the information you have submitted to us for review was created after the system received the request for information, and is thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system is not required to release this information, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we address the system's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Additionally, pursuant to section 552.301(e), 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. *Id.* § 552.301(e).

It appears that the submitted March 2, 2007 request is a clarification to a request from February 2, 2007. You have not submitted a copy of the original request nor have you informed us of the date on which the system received the original request. Furthermore, although the requestor clarified his request on March 2, 2007, you have not informed us of the date on which the system requested clarification from the requestor. Since we are unable to calculate whether or to what extent the deadlines mandated by section 552.301 have been tolled, we find that the system failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office. *See Open Records Decision No. 663 (1999)* (request for clarification does not trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response).

A governmental body's failure to comply with the procedural requirements of section 552.301 of the Government Code 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)*. Normally, a compelling interest is demonstrated when some other source

of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.111 of the Government Code is a discretionary exception that does not overcome the presumption of openness. *See* Open Records Decision No. 655 at 2 n. 2 (2000). Thus, none of the submitted information may be withheld under section 552.111. However, because third party interests can provide a compelling reason to withhold information, we will address whether the submitted information is excepted under the Act.

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) 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, Denham, Kimley, Los Reyes, and Shadow Creek have not submitted to this office any reasons explaining why their information should not be released. Therefore, Denham, Kimley, Los Reyes, and Shadow Creek have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g.*, Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the system may not withhold any portion of the submitted information on the basis of any proprietary interest Denham, Kimley, Los Reyes, or Shadow Creek may have in the information. As you make no other arguments against disclosure, the responsive 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/ma

Ref: ID# 279145

Enc. Submitted documents

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(w/o enclosures)

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Hills of Lake Medina, L.L.P.
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Denham - Ramones Engineering and Associates, Inc.
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