



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2007

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR2007-13609

Dear Ms. Grace:

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# 292800.

The City of Austin (the "city") received a request for certain certified payroll records. You claim that the requested information is not public information that is subject to the Act. We have considered your arguments and have reviewed the submitted representative sample of information.¹

We note that the Act applies only to public information. *See* Gov't Code §§ 552.021, .221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with 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." Gov't Code § 552.002(a). Thus, information requested of a governmental body is subject to the Act even if the governmental body does not physically possess the information, if the information is collected, assembled, or maintained for a governmental body and the governmental body owns the information or has a right of access to the information.

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state that the requestor seeks information regarding certified payroll records of a contractor that is engaged in work on a public works project. Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid “[n]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]” *Id.* § 2258.021(a). Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record “shall be open at all reasonable hours to inspection by the officers and agents of the public body.” *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov’t Code § 2258.024).

You explain that the requested information is maintained by the contractor, and not for the city, but instead pursuant to the contractor’s statutory obligations under chapter 2258 of the Government Code. You also state that the requested information is not kept by the contractor as an agent of the city. Based on your representations and our review of the submitted information, we find that the requested payroll records do not constitute information that is “collected, assembled, or maintained . . . by” the city for purposes of section 552.002(a)(1) of the Government Code. Likewise, we find that the contractor in this instance does not prepare the requested payroll records as the agent of the city. Instead, the contractor does so in the performance of its own statutory duties under section 2258.024 of the Government Code. Accordingly, we conclude that the requested payroll records are not subject to the Act and need not be released to the requestor in response to this ruling. *See also* Open Records Decision No. 558 (1990) (information subject to chapter 552 of Government Code, even though not in governmental body’s physical custody, where third party prepared information on governmental body’s behalf and makes it available to governmental body).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 292800

Enc. Submitted documents

c: Mr. Conrad Masters
400 Josephine Street
Austin, Texas 78704
(w/o enclosures)