



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2007

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
P. O. Box 61429
Houston, Texas 77208-1429

OR2007-13746

Dear Ms. Alexander:

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# 292189.

The Metropolitan Transit Authority of Harris County ("METRO") received a request for six categories of information from meetings pertaining to Cubic Transportation Systems, Inc. and Affiliated Computer Services f/k/a Ascom, Inc. from June 1, 2004 to July 31, 2007. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You inform us that some of the responsive information consists of certified agendas

of executive session meetings of METRO's Board of Directors.¹ Therefore, METRO must withhold the certified agendas pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, you assert that the remaining requested information is the same information that was requested in a discovery request submitted to METRO in pending litigation. We note, however, that discovery procedures and requests made under the Act are two disparate processes. *See* Attorney General Opinion JM-1048 at 3 (1989) (stating that the fundamental purposes of the Act and of civil discovery provisions differ); Open Records Decision No. 551 (1990) at 3-4 (discussion of relation of Act to discovery process). The discovery process is a process through which parties to litigation can obtain information pertaining to the litigation. A public information request under the Act is a process in which any individual may request information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under the Act. As such, receiving a request for discovery does not preclude the need of a governmental body to respond to a subsequent request for the same information made by the same individual under the Act.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. — Austin 1990, no writ).

As of the date of this decision, this office has not received a representative sample of any of the remaining requested information that METRO seeks to withhold. Therefore, because METRO has not complied with section 552.301 in requesting this decision, the remaining requested information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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

¹As you acknowledge, METRO is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information under statutory predecessor to Gov't Code § 552.101).

(1982). Sections 550.103, 552.107, and 552.111 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. — Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301, METRO has waived all of its discretionary exceptions and may not withhold any of the remaining requested information under sections 552.103, 552.107, or 552.111. METRO also raises section 552.101 of the Government Code, whose applicability can provide a compelling reason for non-disclosure under section 552.302. However, you have not submitted any of the remaining information that METRO seeks to withhold, and thus we have no basis for concluding that there is any compelling reason to withhold any such information under section 552.101. Therefore, we have no choice but to order you to release the remaining requested information. If you believe that any of the information at issue is confidential and may not lawfully be released, you must challenge this 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).

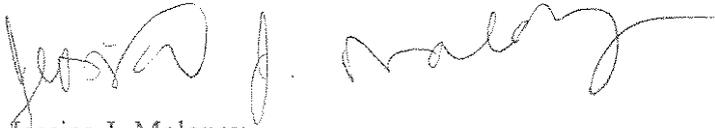
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 292189

c: Mr. Graham Hill
Locke Liddell & Sapp, PLLC
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