



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2008

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

OR2008-03125

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# 304264.

The Metropolitan Transit Authority of Harris County (the "authority") received a request for 1) the size, address, and appraisals of specified property being sold by the authority, 2) the sales contract between the authority and buyer of the specified property, and 3) a list of properties, sales contracts, and easement purchase agreements regarding real estate purchased by the authority on any of the 5 LRT alignments. You state that the authority has provided the requestor with information responsive to item three. You claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the authority's obligations under the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. A governmental body that requests a decision under the Act must submit a copy of the request for information and the information the governmental body seeks to withhold to this office not later than the fifteenth business day after the date of its receipt of the request. *See Gov't Code* § 552.301(e)(1)(B), (D). The authority received the request for information on December 14, 2007. You inform us that the authority was closed on December 25, 2007 and, we understand, January 1, 2008. Based on these dates, the fifteenth business day following the authority's receipt of the request was January 8, 2008. Although you reference in your December 31, 2007, request for a ruling to this office Exhibits A and B, which you state consist of the requestor's written

request for information and the information the authority seeks to withhold, no such exhibits were attached. The only attachments to the December 31, 2007, request for a ruling were the memo detailing your argument and your letter of the same date to the requestor. You did not submit the request for information or the information the authority seeks to withhold to this office until January 10, 2008. Consequently, we find that the authority failed to comply with the procedural requirements of section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.105 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 protects governmental body's interest and is subject to waiver), 522 (1989) (discretionary exceptions in general). As such, section 552.105 does not constitute a compelling reason to withhold information for purposes of section 552.302. In failing to comply with section 552.301, the commission has waived its claim under section 552.105. Therefore, the commission may not withhold any of the submitted information under section 552.105. As the authority raises no further exceptions to disclosure, the authority must release the submitted information in its entirety.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 304264

Enc. Submitted documents

c: Mr. Paul Magaziner
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(w/o enclosures)