



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2008

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2008-04608

Dear Ms. Shortall:

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# 307682.

The City of Arlington (the "city") received a request for the inspector cost estimate and the contractors' costs for four specified addresses for which the city solicited bids for repairs. You do not take a position as to whether the submitted information is excepted under the Act; however, you state, and provide documentation showing, that you notified the following companies of the city's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor: B&R Contractor Services; Cleta Bryant Construction Co.; Double D Construction; GTO Construction; Integrity Texas; and JB's Kool Air & Painting. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be

released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of any of the interested third parties, and the city may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the city must release the submitted information 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 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 307682

Enc. Submitted documents

c: Mr. Gaylord Johnson
Add On Construction Inc.
1802 Mansfield Road
Cedar Hill, Texas 75104
(w/o enclosures)

B&R Contractor Services
5300 Pocassett Drive
Arlington, Texas 76018
(w/o enclosures)

Cleta Bryant Construction Co.
P.O. Box 360067
Dallas, Texas 75336
(w/o enclosures)

Double D Construction
P.O. Box 24281
Fort Worth, Texas 76124
(w/o enclosures)

GTO Construction
3617 Martin Street
Fort Worth, Texas 76119
(w/o enclosures)

Integrity Texas
220 S. Sylvania Avenue
Fort Worth, Texas 76111
(w/o enclosures)

JB's Kool Air & Painting
P.O. Box 532126
Grand Prairie, Texas 75053
(w/o enclosures)