



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2008

Ms. Blakely L. Fernandez
Tuggey, Rosenthal, Pauerstein, Sandoloski, & Agather, L.L.P.
755 East Mulberry, Suite 200
San Antonio, Texas 78212

OR2008-12241

Dear Ms. Fernandez:

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# 320284.

The Alamo Regional Mobility Authority (the "authority"), which you represent, received a request for information received or generated since December 2005 pertaining to any Transportation Infrastructure Finance and Innovation Act loan related to a specified highway expansion project in Bexar County. You state you will release most of the requested information to the requestor. You do not raise any arguments on behalf of the authority. You claim, however, that certain information pertaining to Cibolo Creek Infrastructure ("Cibolo") is excepted from disclosure under section 552.101 of the Government Code. You also state that release of information pertaining to other third parties may implicate those parties' proprietary interests. Accordingly, pursuant to section 552.305 of the Government Code, the authority notified San Antonio Mobility Coalition (the "coalition"), URS Corporation ("URS"), HNTB Corporation ("HNTB"), Wilbur Smith Associates ("Smith"), and Cibolo of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the arguments and reviewed the submitted information.

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 such as section 370.307 of the Transportation Code, which provides as follows:

- (a) To encourage private entities to submit proposals under Section 370.306, the following information is confidential, is not subject to disclosure,

inspection, or copying under Chapter 552, Government Code . . . until a final contract for a proposed project is entered into:

- (1) all or part of a proposal submitted by a private entity for a comprehensive development agreement, except information provided under Sections 370.306(b)(1) and (2);
- (2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and
- (3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement.

Transp. Code § 370.307(a). The information at issue consists of the execution copy of the design/build comprehensive development agreement contract. The authority represents that this contract was created through a collaboration between the authority and Cibolo during its consideration of Cibolo's proposal for a comprehensive development agreement and that the authority created the form of the document. The authority also informs us that the information contained in this contract reflects the proposal and supplemental information submitted by Cibolo for its proposal. The authority also states that the final contract for this project has not been executed. Based on the authority's representations and our review, we conclude that the submitted design/build comprehensive development agreement contract is subject to section 370.307(a). Section 370.306(b) of the Transportation Code sets forth the information that must be included in a proposal for a proposed transportation project if a regional mobility authority accepts an unsolicited proposal. *Id.* § 370.306(b). Information that is subject to subsections 370.306(b)(1) and (2) is not confidential under section 370.307(a). The authority represents that the project at issue went through a formal procurement process in which the authority solicited proposals. Since the authority solicited proposals on this project, we conclude that section 370.306(b) does not apply to this project. We therefore agree that the authority must withhold the submitted design/build comprehensive development agreement contract in its entirety under section 552.101 of the Government Code in conjunction with section 370.307(a) of the Transportation Code.¹

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) of the Government Code 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, we have not received any arguments from the coalition, URS, HNTB, or Smith. We thus have no basis for concluding that any portion of these companies' information constitutes their

¹As our ruling is dispositive as to the submitted contract, we need not address Cibolo's arguments against its disclosure.

proprietary information. *See id.* § 552.110; 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. Accordingly, the information of the coalition, URS, HNTB, and Smith must be released.

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). If the governmental body does not file suit over 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).

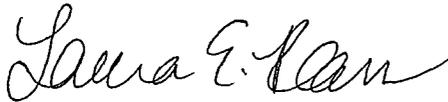
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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# 320284

Enc. Submitted documents

c: Mr. Andrew Hawkins
P.O. Box 684881
Austin, Texas 78768
(w/o enclosures)

Mr. Robert Slimp
HNTB Corporation
85 North East Loop 410, Suite 304
San Antonio, Texas 7816
(w/o enclosures)

Mr. Michael Lipinski
Cibolo Creek Infrastructure JV
1114 Lost Creek Boulevard, Suite 130
Austin, Texas 78746
(w/o enclosures)

San Antonio Mobility Coalition
602 East Commerce Street
San Antonio, Texas 78205
(w/o enclosures)

Mr. Tushar Patel
URS Corporation
9009 Mountain Ridge Drive, Suite 100
Austin, Texas 78759
(w/o enclosures)

Mr. Christopher Mwalwanda
Senior Project Manager
Wilber Smith Associates
9009 Mountain Ridge Drive, Suite 100
Austin, Texas 78759
(w/o enclosures)