



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2009

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East Eleventh Street  
Austin, Texas 78701-2483

OR2009-09001

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# 347523.

The Texas Department of Transportation (the "department") received a request for current and past user agreements between the department and JPI for specified properties. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor asks for specific user agreements. Accordingly, only the user agreements are responsive to this request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

We note that Exhibit B is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Exhibit B consists of contracts relating to the expenditure of public funds. Therefore, the department may only withhold this information if it is confidential under "other law." You seek to withhold Exhibit B under sections 552.103 and 552.105 of the Government Code. However, sections 552.103 and 552.105 are discretionary in nature and do not constitute "other law" for purposes of section 552.022. *See 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 section 552.103); Open Records Decision No. 564 (1990) (statutory predecessor to 552.105 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). Thus, Exhibit B may not be withheld under these exceptions. As you raise no other exceptions to disclosure, Exhibit B must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 347523

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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