



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Mr. David W. Ross
Brown & Ross, P.C.
2008 North West Military Highway
San Antonio, Texas 78213-1230

OR2010-16801

Dear Mr. Ross:

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# 399412.

The San Antonio River Authority (the "authority"), which you represent, received a request for two specified appraisal reports and a schedule of upcoming hearings pertaining to the Mission Reach portion of the San Antonio River Improvement Project. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Hot Wells, L.P. ("Hot Wells"); Integra Realty Resources-San Antonio ("Integra"); and Sandison Appraisal L.L.C. ("Sandison") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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 also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the portion of the request asking for a schedule of upcoming hearings pertaining to the Mission Reach portion of the San Antonio River Improvement Project. Thus, to the extent any information

responsive to this portion of the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Hot Wells, Integra, or Sandison explaining why each third party's submitted information should not be released. Therefore, we have no basis to conclude that these third parties have a protected proprietary interest in the submitted 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 authority may not withhold any portion of the submitted information based upon the proprietary interests of Hot Wells, Integra, or Sandison.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of two completed appraisal reports. Pursuant to section 552.022(a)(1) of the Government Code, a completed report or investigation is expressly public, unless it is excepted under section 552.108 of the Government Code or is expressly confidential under "other law." You seek to withhold the submitted information 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, the submitted information may not be withheld under these exceptions. Because no other exceptions to disclosure have been raised, the submitted information must be released.¹

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, 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 399412

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

¹As we are able to make this determination, we need not address the requestor's assertion the submitted information is public pursuant to section 552.007 of the Government Code.

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