



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2010

Ms. Camila W. Kunau
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-18942

Dear Ms. Kunau:

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# 405148 (COSA File No. 10-1704).

The City of San Antonio (the "city") received a request for information relating to bidding for publication of city legal notices. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under sections 552.101 through 552.142 of the Government Code. You also believe this request for information may implicate the interests of third parties. You inform us La Prensa de San Antonio and the Observer Newspaper Group were notified of the request and of their right to submit arguments as to why the requested information should not be released.¹

Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments in support of the governmental body's claimed exceptions to disclosure and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). You state the city received the present request for information on October 18, 2010.

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We note the city received clarification of the request on October 21. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As of the date of this decision, you have not submitted to this office either any written comments in support of the exceptions the city claims or any information the city seeks to withhold. Thus, the city has not complied with section 552.301 of the Government Code in requesting this decision.

If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

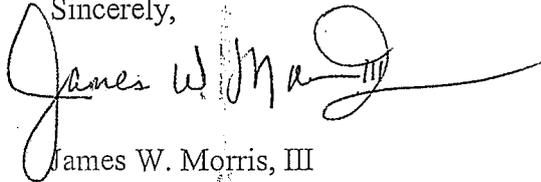
We note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from either of the third parties you notified. Thus, because the third parties have not demonstrated any of the requested information is proprietary for the purposes of the Act, the city may not withhold any of the information on the basis of any proprietary interest the third parties may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). We also note the city's discretionary exceptions to disclosure are not compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the city has waived the discretionary exceptions it claims and may not withhold any of the requested information under any of those exceptions. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The city also claims mandatory exceptions to disclosure. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the city has not submitted any of the requested information to this office, we have no basis to conclude that any of the information is confidential under any mandatory exception. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 405148

c: Requestor

Mr. Tino Duran
La Prensa de San Antonio
230 North Medina
San Antonio, Texas 78207

Mr. Hussein Ali
Observer Newspaper Group
P.O. Box 200226
San Antonio, Texas 78220