



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2011

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2011-19197

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# 441012.

The Texas Department of Transportation (the "department") received two requests for the total amount of compensation paid by the department or two specified entities to four named individuals in each year during a specified time period. You state the department is releasing responsive information that exists at the department and that has not previously been released to the requestors. You claim the remaining requested information does not consist of public information subject to the Act. Additionally, you state the requests for information implicate the proprietary interests of the two specified entities. Accordingly, you state, and provide documentation showing, you notified O. R. Colan Associates ("Colan") and Lone Star Infrastructure ("Lone Star") of the requests for information and of their rights to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> 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 considered the submitted arguments.

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<sup>1</sup>As of the date of this letter, this office has not received comments from any third party explaining why the requested information should not be released.

Section 552.002(a) of the Government Code states as follows:

(a) In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002. Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The test for whether the Act applies to information held by a third party is whether: (1) the requested information relates to the governmental body’s official duties or business; (2) the third party acts as the agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information. Open Records Decision Nos. 558 (1990), 499 (1986), 462 (1987).

You state the remaining requested information relates to compensation paid by Colan and Lone Star as contractors to specific real estate appraisers. In this instance, you state the department does not have a copy of the remaining requested information, and the department does not have a right of access to the information at issue. Further, you explain Colan and Lone Star do not maintain the information at issue for or on behalf of the department. You additionally state Colan and Lone Star “did not create the information at the discretion of [the department] and the information was not paid for with public funds.” Thus, you argue the information at issue does not consist of information “collected, assembled, or maintained” by or for the department for purposes of section 552.002(a) of the Government Code. Based on your representation that the department does not have a right of access to the information at issue, we agree the remaining requested information is not public information for purposes of section 552.002. Therefore, the department need not provide such information in response to these requests.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire V. Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 441012

c: 3 Requestors

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