



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Gilbert D. Douglas
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-867

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 26573.

The City of Houston (the "city") has received two requests for information relating to franchise agreements between the city and Union Pacific Railroad and the Settegast switching yard. Specifically, the requestor seeks "any and all information . . . which pertains to any agreements between the City or Harris County, and Union Pacific Railroad which would include, but not be limited to, any franchise agreements." In addition, the requestor seeks "any documents which relate to the Settegast Switching Yard . . . or any construction by Union Pacific Railroad, which occurred at the Yard, or between Ley and Crosstimber Roads." You advise us that the city has made some of the requested information available to the requestor. You seek to withhold the remaining information from required public disclosure.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

You advise us that the city received the first request on March 21, 1994. The request, sent by certified mail, is dated May 6, 1994. You requested a determination of this office by letter dated May 23, 1994. On the basis of these facts, we conclude that you failed to request a decision within the ten-day period provided by section 552.301(a) of the Government Code.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *Hancock*, 797 S.W.2d at 381. Compelling reasons exist when some other source of law makes the information confidential or when the privacy or property interests of third parties are at stake. Open Records Decision No. 150 (1977) at 2. You claim that sections 552.101, 552.107, 552.110, and 552.111 of the Government Code except the requested information from required public disclosure.

We first address your assertion that section 552.101 of the Government Code excepts the requested information from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite no authority in conjunction with your assertion of section 552.101. In addition, we are not aware of any law that makes the submitted information confidential. Accordingly, we conclude that the city may not withhold the requested information under section 552.101 of the Government Code.

Next, we address your assertion of sections 552.107 and 552.111 of the Government Code. The fact that information might have been excepted from disclosure under sections 552.107(1) and 552.111 had you made a timely request for a ruling does not constitute a compelling reason to withhold the information. *See, e.g.*, Open Records Decision Nos. 630 (1994) (concluding that section 552.107(1) is waived if not timely raised) (copy enclosed); 150 (1977) (concluding that section 552.111 is waived if not timely raised). We conclude, therefore, that the city may not withhold the requested information under sections 552.107(1) and 552.111 of the Government Code.

Finally, we address your assertion that section 552.110 of the Government Code excepts the requested information from required public disclosure. Section 552.110 protects the property interests of private persons by excepting from required public disclosure trade secrets. Pursuant to section 552.305 of the Government Code, we have notified the party whose proprietary interests are implicated by this request. We have received no response. When an agency or company fails to provide relevant information regarding factors necessary to make a 552.110 claim, a governmental body has no basis for withholding the information under section 552.110.¹ See Open Records Decision No. 402 (1983) at 2. Accordingly, the city may not withhold the requested information under section 552.110 of the Government Code. The city must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 26573

Enclosures: Submitted documents
Open Records Decision No. 630

cc: Mr. Ray Whitman
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1100 Louisiana, Suite 4800
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(w/o enclosures)

¹Section 552.110 also excepts commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. See Open Records Decision No. 592 (1991). Neither the city nor the party whose property interests are implicated by this request have cited, nor are we aware of, any statute or judicial decision that makes the requested information privileged or confidential.

Mr. Danny Allen
Union Pacific Railroad
1416 Dodge Street
Omaha, Nebraska 68179
(w/o enclosures)