



November 30, 1999

Mr. Gene Locke
Mayor, Day, Caldwell & Keeton, L.L.P.
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

OR99-3442

Dear Mr. Locke:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129742.

The Harris County-Houston Sports Authority (the "Authority") received a request for

copies of any and all correspondence, within the past 90 days, between the Harris County Houston Sports Authority, its construction supervisors, and/or any members of the HCHSA Construction Committee and/or contractors for the new downtown baseball stadium regarding cost overruns or the projected final cost of the stadium project [as well as] copies of any and all expenses which have been paid out of the baseball stadium's contingency fund.

You state that the Authority does not object to disclosure of the requested information. The Authority notified its contractor, Brown and Root Building Company ("Brown and Root"), of this request. Gov't Code § 552.305. Brown and Root asserts that approximately ninety -eight pages of information containing estimated costs of construction of the Enron Field baseball stadium are excepted from public disclosure based on sections 552.104, 552.105, and 552.111, and the commercial or financial information prong of section of 552.110.

Section 552.022(a) reads in relevant part as follows:

(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;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

You have submitted representative samples of the information at issue.¹ We believe that this information fits into categories three and five of the section 552.022 list of public information. Consequently, the information is public, unless the information is confidential under other law. "Other law," we believe, means the constitutional right to privacy, confidentiality statutes, and judicial decisions recognizing the common-law right to privacy and the right to protect trade secrets from public disclosure. Thus, Brown and Root's raised exceptions, sections 552.104, 552.105 and 552.111, and the commercial or financial information prong of section 552.110, are not other law that makes the information confidential. Therefore, the Authority must release the information to the requestor.²

This letter ruling is limited to the particular records 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

¹In reaching our conclusion here, we assume that 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We note that the Authority failed to timely submit the samples of the information requested in accordance with the Act's procedures for asking for an attorney general decision set out in Government Code section 552.301(e)(1). Consequently, the information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason ordinarily exists when the release of information implicates a third party's proprietary rights. Open Records Decision No. 150 (1977). However, when the third party information is within a section 552.022 category the legislature has declared to be public, we are not compelled to recognize a third party's proprietary interests in such information, if any.

determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* §§ 552.353(b)(3), 552.353(c). If the governmental body does not appeal this ruling, then both the requestor and the attorney general may file suit against the governmental body if necessary to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release part or all of the requested information, the governmental body is responsible for taking the next step. Based on the statute the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 3 things: 1) release the public records; 2) notify the requestor of the exact day, time and place when copies of the records will be provided or when the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref.: ID# 129742

Encl.: Submitted documents

cc: Mr. Joe Izbrand
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(w/o enclosures)