



February 29, 2000

Mr. John Steiner
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2000-0740

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134045.

The City of Austin (the "city") received a request for all drawings submitted by Ptarmigan Machinery Co. in its bid responding to solicitation number RF99100065. The city raises Government Code sections 552.101 and 552.110, without argument. The city submitted responsive information to this office for review.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to (1) request a decision from the Attorney General as to whether the information is within an exception to disclosure, (2) provide the requestor a copy of that request for decision, and (3) and provide the requestor a statement that the governmental body wishes to withhold the information and has sought a decision from the Attorney General. Gov't Code § 552.301. These actions must be taken by the governmental body within ten business days of the governmental body's receipt of the request for information. *Id.* The city received a written request for the subject information on January 20, 1999. The city transmitted its request for decision regarding this information to this office on February 9, 2000. Thus, the city did not comply with the requirements of section 552.301. The requested information is therefore presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977).

The city asserts that the interests of a third party, Ptarmigan Machinery Co., ("Ptarmigan") are implicated by the release of the subject information. The city was required to make a good faith effort to provide this third party with "a statement *in the form prescribed by the*

attorney general that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice,” the reasons the party asserts as to why the information should be withheld. Gov’t Code § 552.305(d) (emphasis added).

The city asserts that it notified Ptarmigan of the city’s submission of its request to this office, and the pending request for information,. The city supplied a letter from Ptarmigan Machinery Co. which states this third party does not wish to waive any confidentiality protection in regard to the responsive information. However Ptarmigan has provided no comment to this office in support of withholding this information. As no exception to disclosure has been demonstrated to apply to the responsive information, it must be released. See Open Records Decision No 552 (1990).

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 determination regarding any other records or any other circumstances.

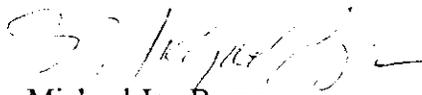
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part 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 three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that 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. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 134045

Encl Submitted documents

cc: Mr. Nathiel G. Egosi
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(w/o enclosures)