



September 18, 2000

Ms. Mary D. Marquez
Assistant to Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2000-3594

Dear Ms. Marquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139472.

The Capital Metropolitan Transportation Authority ("Capital Metro") received a written request for the following information:

Copy of bid form revised -2, section 00301, pages 2-4 of the seven (7) bids submitted for IFB No. 2191 request for proposal for Bus Stop & Sidewalk Accessibility, package 3 for the Capital Metropolitan Transportation Authority.

You state that Capital Metro first received a request for this information on June 20, 2000, and that Capital Metro informed the requestor at that time that "the procurement was in open procurement status and that the only document that we could release was the submitted total amount(s) from each bidder." Although you informed the requestor at that time of your belief that the requested information was excepted from public disclosure pursuant to section 552.104 of the Government Code, you did not request a decision from this office regarding this matter until July 26, 2000. We therefore conclude that you failed to request a decision from this office within ten business days of receipt of the original records request.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (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). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381. You have not shown a compelling reason for withholding the information at issue pursuant to section 552.104 of the Government Code. Accordingly, we deem this exception as waived. *See* Open Records Decision No. 592 at 8 (1991) (governmental body may waive section 552.104, relating to competition or bidding). Capital Metro may not withhold any of the information at issue pursuant to section 552.104.

On the other hand, a demonstration that information comes under the protection of an exception to disclosure intended to protect the proprietary interests of a third party constitutes a compelling reason for non-disclosure. *See* Open Records Decision No. 150 (1977). Although you suggest that the information at issue may implicate the proprietary interests of those parties that submitted bids to Capital Metro, you have not explicitly sought a decision from this office pursuant to section 552.305 of the Government Code, which authorizes parties with a privacy or proprietary interest in requested information to submit arguments to this office as to why the information is excepted from required public disclosure. Nor does it appear to this office that Capital Metro has complied with section 552.305(d) of the Government Code by notifying the companies participating in the bid request of the current records request and inviting them to submit comments to this office as to why their respective proposals are excepted from public disclosure.

Because this office has received no briefing in this matter from any of the companies involved in bidding process, this office has no basis on which to conclude that any portion of the proposals at issue is excepted from required public disclosure under section 552.110 or any other exception to required public disclosure. Accordingly, we conclude that Capital Metro must release all of the requested proposals to the requestor in their entirety.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/RWP/ljp

Ref: ID# 139472

Encl. Submitted documents

cc: Mr. Michael A. Von Ohlen
Prism Development, Inc.
2709 E. 5th Street
Austin, Texas 78702
(w/o enclosures)