



March 19, 2001

Ms. Kimberly Frost
Vinson & Elkins
One American Center, Suite 2700
600 Congress Avenue
Austin, Texas 78701-3200

OR2001-1051

Dear Ms. Frost:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145060.

The Port of Houston Authority (the "authority"), which you represent, received a request for "a list of all of the contracts awarded for the Bayport Terminal project," including "the name of the company that received the contract, a list of its subcontractors, [and] the dollar value of the contract and the description of the contract" for contracts awarded since January 1, 1995. You state that the authority did not have such a list at the time of the request. We note that the Public Information Act does not require a governmental body to prepare new information in response to a request. Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982). In a good faith effort to relate the request to information in your possession, however, you state that the authority has offered to make some of the contracts to which the requestor referred in her request available to her. Nevertheless, you also claim that some of the responsive information, consisting of purchase orders and earnest money contracts, is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public and, therefore, not subject to discretionary exceptions to disclosure. Gov't Code § 552.022. Section 552.022 now states in relevant part:

- (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 are 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 expenditure of public funds or taxes by a governmental body, on completion of the estimate

Gov't Code § 552.022(a)(3), (5). The submitted information includes earnest money contracts executed by each of the parties thereto. Because the earnest money contracts relate to the expenditure of public funds for land, we find the contracts are expressly public information under section 552.022. Likewise, the purchase orders reflect the amount paid for specific services ordered by the authority. We believe these purchase orders are also made expressly public under section 552.022 and may only be withheld if they are confidential under other law. You contend that the contracts and purchase orders are excepted from disclosure under section 552.105 of the Government Code. However, section 552.105 is a discretionary exception, Open Records Decision No. 564 at 2 (1990), and is not other law for purposes of section 552.022.¹ Moreover, we know of no other law that would make the submitted information confidential. Therefore, we find that you must release the submitted information.

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).

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

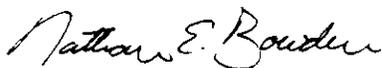
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Hadassah Schloss at 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145060

Encl: Submitted documents

cc: Ms. Jenalia Moreno
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)