OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

January 8, 2002

Ms. Lisa B. Silvia
Paralegal
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2002-0125

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157076.

The Fort Worth Independent School District (the "district") received a request for 1) a copy of the district bid specifications for all work performed by Brooks Construction and Goldstar Construction since the beginning of the current bond program; 2) a copy of the district's current unit pricing policy and procedures as they relate to construction projects; and 3) a printout of all payments to Brooks Construction and Goldstar Construction since the inception of the current bond program through the date of the printout on all purchase orders awarded to these firms, jointly or separately. You have made the information responsive to request item number two above available to the requestor. You claim that the remaining responsive information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that a governmental body that wishes to withhold requested information must provide to the Attorney General a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy, no later than fifteen days after the governmental body receives the written request for information. Gov't Code § 552.301(e). If the governmental body does not comply with the requirements of Government Code section 552.301, the requested 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 is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.103 is a permissive exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of section 552.103 and 552.111). Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness.

However, the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991). You assert that the documents at issue have been forwarded to the Federal Bureau of Investigation and that the matter is still under active investigation. You further state that the F.B.I. has informed the district that it would like for the district to withhold the information at issue in its entirety. However, because you have not provided the responsive information to this office as required, we are unable to determine whether the ongoing investigation constitutes a compelling reason sufficient to overcome the presumption of openness that results from the district's failure to comply with section 552.301. Thus, we have no choice but to order the information responsive to request items number one and three above released pursuant to section 552.302 of the Government Code. If you believe this information is confidential and therefore may not be lawfully released, you must challenge the ruling in court as outlined below.

In addition, we note that section 552.022 of the Government Code provides, in pertinent 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 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[.]

Gov't Code § 552.022(a)(3). Therefore, the district must release any requested information that falls within subsection (3) of section 552.022(a), unless that information is expressly confidential under other law. Section 552.108 of the Government Code is a discretionary exception under the Public Information Act and does not constitute "other law" for the purposes of section 552.022(a)(3). *See* Open Records Decision No. 177 at 3 (1977) (stating that governmental body may waive statutory predecessor to section 552.108). Therefore, any information falling within the ambit of section 552.022(a)(3) would not be excepted from public disclosure under section 552.108.

To summarize, the district may not withhold the requested information under sections 552.103 or 552.108, and therefore, it must be released to the requestor.

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).

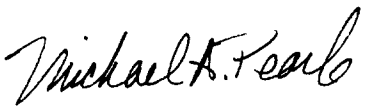
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassah Schloss at the Texas Building and Procurement 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 157076

Enc. Submitted documents

c: Mr. Eugene J. Gutierrez
6617 Country Day Trail
Fort Worth, Texas 76132
(w/o enclosures)