



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 5, 2002

Mr. Raymond L. Telles
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-6943

Dear Mr. Telles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173168.

The City of El Paso (the "city") received a request for copies of information relating to the "Mayor's Environmental Task Force" (the "task force") and the task force's subcommittee on Jobe Concrete Products, Inc (the "subcommittee"). You indicate that the city is willing to make some responsive information available to the requestor. You claim, however, that the remaining requested information is not subject to disclosure under the Public Information Act (the "Act"). We have considered your arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

We note that this office previously addressed some of the information requested in this instance in Open Records Letter No. 2002-6611 (2002). Specifically, we ruled in that decision that the city must release the requested "notes, documents, memoranda, electronic mail, reports, budget submittals, contracts, correspondence, presentations and accompanying exhibits, and narratives in possession of the ASARCO Subcommittee of the Environmental Task Force in possession of the [task force]" and the requested other records relating to ASARCO in possession of the task force. You do not inform our office, nor are we aware, of any changes with regard to the law, facts, and circumstances on which that ruling was based. Accordingly, we conclude that the city must rely on our decision in Open Records Letter No. 2002-6611 (2002) with respect to records requested in this instance that have been previously ruled upon. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling

is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

We now address your claim regarding any remaining requested records that are held by the city, the task force, and/or the subcommittee. You claim that this information is not subject to the Act because it does not constitute "public information" pursuant to section 552.002 of the Government Code. Section 552.002 defines "public information" as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). Further, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act, if a governmental body owns or has a right of access to the information. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988). You argue that the requested information does not constitute "public information" because it is not maintained by or for the city in connection with the transaction of official city business. You state that this information was not created under the official guidance of the city mayor (the "mayor") or any municipal employees or representatives because the task force and subcommittee were created and its members selected solely as a result of the mayor's own initiative without any city council oversight or approval. You, therefore, maintain that the task force and subcommittee are not subject to the control of the city and that the city does not have a right of access to information created by those groups.

We note that the Act does not ordinarily require a governmental body to obtain information that is not in its possession. *See* Open Records Decision Nos. 445 (1986), 317 (1982). However, where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. *See* Open Records Decision No. 558 (1990). Moreover, if a governmental entity designates an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure under the Act. *See* Open Records Decision Nos. 585 (1991), 445 (1986) (information prepared by private entity at request or under direction of city subject to disclosure), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that a governmental body can waive its right of access to information gathered on behalf of a governmental body).

You acknowledge that the primary purpose of the task force and subcommittee is to provide an avenue for the mayor's office to receive insight and information on various issues from knowledgeable members of the community who were appointed by the mayor. Based on your representations, we therefore find that the task force and subcommittee in this matter are acting as agents for the city and that the remaining requested information was created for the mayor's use in conducting official business related to the purposes of the task force and subcommittee. *See* Open Records Decision No. 462 (1987). You suggest, however, that the "official business" of the city is only conducted through an action that the city council collectively takes through voting procedures. We note that this office has never interpreted the meaning of "public information" or "official business" so narrowly. *See, e.g.,* Open Records Decision No. 635 (1995) (based on fact that content of entries was "commission-related," among other factors, commissioner's calendar held subject to Act). Consequently, after carefully reviewing your arguments, we conclude that any portion of the remaining requested information that is maintained by the city itself or the subcommittee constitutes "public information" under section 552.002 of the Government Code. As we base our decision on this matter on section 552.002, we need not address your remaining claim regarding section 552.003 of the Government Code.

However, we must next address the procedural requirements of section 552.301 of the Government Code. Section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested and label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e). To date, the city has not submitted any portion of the remaining requested information to us for our review. Therefore, we find that the city failed to comply with section 552.301 of the Government Code in requesting a decision from our office with regard to this information.

Because the city failed to comply with the procedural requirements of section 552.301, the remaining requested information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that the remaining requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the city did not submit a copy of the remaining requested information for our review, we have no basis for concluding that any portion of it is excepted from disclosure under the Act or is otherwise confidential by law. Accordingly, we conclude that the city must release to the requestor the entirety of the remaining requested information.

In summary, the city must rely on our decision in Open Records Letter No. 2002-6611 (2002) with respect to records requested in this instance that have been previously ruled upon. The city must release to the requestor the entirety of the remaining requested 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).

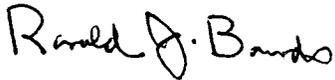
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 173168

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