



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 14, 2003

Mr. Richard A. Strieber
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2003-0283

Dear Mr. Strieber:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174258.

The Harlandale Independent School District (the "district"), which you represent, received a request for "the certified payroll records at Central Electric Company on all jobs ongoing with the [district]." You claim that the requested information is not subject to disclosure under chapter 552 of the Government Code. You also claim that all or part of the information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments. We also received comments from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Chapter 552 of the Government Code is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code 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, the requested information is subject to chapter 552 of the Government Code only if (1) the information is "collected, assembled, or maintained" by the district or (2) the information is collected, assembled or maintained "for [the district] and the [district] owns the information or has a right of access to it."

In this instance, the requestor seeks access to "certified payroll records at Central Electric Company[.]" Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid "[n]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]" Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record "shall be open at all reasonable hours to inspection by the officers and agents of the public body." *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov't Code § 2258.024).

You explain that the requestor seeks access to the certified payroll records of Central Electric Company, a third-party subcontractor on a district construction project. You state that the district does not maintain the certified payrolls of third-party subcontractors such as Central Electric. Accordingly, we find that the requested payroll records do not constitute information "collected, assembled, or maintained . . . by" the district for purposes of section 552.002(a)(1) of the Government Code. Likewise, we find that Central Electric does not prepare the requested payroll records as the agent of the district. Instead, Central Electric does so in the performance of its own statutory duties under section 2258.024 of the Government Code. Therefore, we conclude that the payroll records are not information collected, assembled, or maintained for the district for purposes of section 552.002(a)(2). *See also* Open Records Decision No. 558 (1990) (information is subject to Gov't Code chapter 552, even though it is not in governmental body's physical custody, where third party prepared information on governmental body's behalf and makes it available to governmental body). Consequently, the requested payroll records do not constitute public information under section 552.002 of the Government Code, and thus the district is not required to make the records available to the requestor. As we are able to make this determination, we do not address sections 552.101 and 552.102.

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).

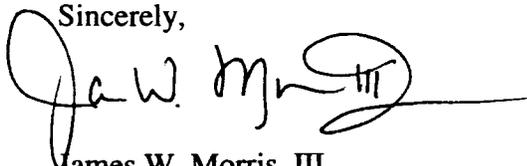
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 174258

c: Mr. Coy Rogers
Mr. Fabian Davila
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International Brotherhood of Electrical Workers
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(w/o enclosures)