



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-0898

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176675.

The City of Austin (the "city") received a request for information relating to city construction projects and the city's Department of Small and Minority Business Resources. The request consists of two parts, described in two lists of items numbered one through six.¹ You advise

¹ Part one of the request asks for (1) technical specifications for concrete masonry units for the 911 Emergency Center and APD Forensic projects; (2) addenda addressing the concrete masonry units for the 911 Emergency Center and APD Forensics projects; (3) verifiable documentation that shows when the documents of items 1 & 2 above were issued to the public; (4) compliance plans for the first second and third low bidders for the 911 Emergency Center and the APD Forensics projects; (5) compliance plans for the first second and third low bidders for the first bid of the North Lamar project; and (6) the hearing officer's finding on Mr. James Harper's protest to the recommendation for reward to the first low bidder.

Part two of the request asks for (1) a list of all projects awarded since January 1, 2000 that included Limon Trucking or DeAnda Trucking as subcontractors; (2) spreadsheets prepared by Joe Sanchez and his team leading up to the award of the 911 Emergency Center and APD Forensics projects; (3) spreadsheets prepared by Joe Sanchez and his team tracking M/WBE participation after award of the 911 Emergency Center and APD Forensics projects; (4) the name of the masonry subcontractor on the Walnut Creek Wastewater Treatment Plant project and a list of all previous city projects that subcontractor has worked on since January 1, 2000; (5) a list of the projects where Lino Rivera superceded the findings of Jan Lawson as addressed in item 15 in the application and affidavit for the search warrant of his office; and (6) the name of the individual Lino Rivera asked to bring him files as alleged in item 16 of the same search warrant document.

that the city will release information responsive to items one, two, three, and six of Part 1 of the request. You claim, however, that information responsive to items four and five of Part 1 of the request, as well as information responsive to items one through six of Part 2 of the request, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have not submitted a copy of the specific information responsive to items one, four, five, and six of Part 2 of the request.² Consequently, we determine that the city has failed to comply with section 552.301 with respect to the information requested in items one, four, five, and six of Part 2 of the request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to withhold information responsive to items one, four, five, and six of Part 2 under section 552.108. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). Therefore, to the extent the city has information responsive to items one, four, five, and six of Part 2, the city must release such information to the requestor.

We next address the responsive information you have submitted. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the

² A governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to pending investigations into allegations of wrongdoing relating to contracts for city business. You further state, and provide documentation showing, that the allegations are being investigated by the Austin Police Department, the Travis County District Attorney, and federal authorities. Based upon your representations and our review of the information you have submitted, we determine that the release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we determine that the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.³ We note that although section 552.108(a)(1) authorizes you to withhold the information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

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

³ As we are able to make a determination under section 552.108(a)(1) of the Government Code, we do not address your claim under section 552.108(b)(1) of the Government Code.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 176675

Enc: Submitted documents

c: Mr. Bill White
Law Offices of William A. White, P.C.
608 West 12th Street, Suite B
Austin, Texas 78701
(w/o enclosures)