



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 20, 2003

Ms. Sylvia M. Hartless
Public Information Officer
Fort Worth Transportation Authority
1600 East Lancaster Avenue
Fort Worth, Texas 76102-6720

OR2003-1133

Dear Ms. Hartless:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176760.

The Fort Worth Transportation Authority (the "authority") received a request for "any documents, e-mail or other information pertaining to the most recent annual salary of outgoing general manger of the T, John Bartosiewicz," and for "[a]ny documents, e-mail or other information pertaining to the annual salary of the person hired to replace him." You state that although this information is not responsive to the request, you have released a copy of the contract between the authority and McDonald Transit Associates, Inc., and McDonald Transit, Inc. Pursuant to section 552.305 of the Government Code, you state that you have notified McDonald Transit Associates, Inc., and McDonald Transit, Inc., (collectively, "McDonald") of this request for information and of their right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act (the "Act") in certain circumstances). You claim that the authority possesses no information responsive to the request. We have considered the arguments submitted by the authority and by McDonald.

The Public Information Act (the "Act") applies only to public information. See Gov't Code §§ 552.021, .221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with 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). You state that the requested salary information pertains to employees of McDonald, not of the authority. You explain that McDonald is a private corporation that provides transit management services under contract to the authority. Furthermore, McDonald states that the salary in question is negotiated solely between McDonald and its general manager and can be "changed at anytime . . . without the [authority's] consultation, knowledge, or approval." The authority and McDonald both assert that the authority does not possess the requested information, and the authority's contract with McDonald does not give the authority a right of ownership or access to the requested information. Based upon these representations, we find that the requested information is not "public information" of the authority, and thus, the authority is not required to release the requested information. See Gov't Code §§ 552.021, .221.

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 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 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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 176760

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