



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 16, 2003

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-4925

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184275.

The University of Texas System (the "system") received a request for the certified payrolls for 2001 and 2002 of a named business entity. The request also includes questions relating to a prevailing wage schedule and overtime compensation. You claim that the requested payroll information is not subject to disclosure under chapter 552 of the Government Code. In the alternative, you contend that some of the payroll information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments.

Initially, we address the system's obligations with regard to the questions posed by the requestor. In responding to a request for information under chapter 552 of the Government Code, a governmental body is not required to answer factual questions, conduct legal research, or create new information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, chapter 552 does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body that receives a request for information must make a good-faith effort, however, to relate the request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We therefore assume that you have made a good-faith effort to identify any information held by or available to the system that is responsive to the requestor's questions and that you have released any such information, to the extent that it existed when the system received this request. If not, then you must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

Next, we address your arguments with regard to the requested payroll information. 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 payroll information is subject to chapter 552 of the Government Code only if (1) the information is "collected, assembled, or maintained" by the system, *id.* § 552.002(a)(1), or (2) the information is collected, assembled or maintained "for [the system] and the [system] owns the information or has a right of access to it." *Id.* § 552.002(a)(2); *see also* Open Records Decision Nos. 534 at 2 (1989) (governmental body has no duty to obtain information that is not in its possession, so long as no entity holds information on governmental body's behalf), 558 (1990) (Gov't Code ch. 552 not applicable if governmental body does not own or have right of access to information prepared by another entity).

In this instance, the requestor seeks access to "Certified Payrolls . . . of Baker Concrete Construction[.]" You inform us that the requested information relates to a construction project of the system that is subject to chapter 2258 of the Government Code. *See* Gov't Code § 2258.001 *et seq.* Chapter 2258 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 Baker Concrete Construction, Inc. ("Baker"), a private entity that is a subcontractor on the system's construction project. You inform us that the system does not maintain or otherwise have possession or control of the requested payroll records. Accordingly, we find that these records do not constitute information "collected, assembled, or maintained . . . by" the system for purposes of section 552.002(a)(1) of the Government Code. Likewise, Baker does not prepare the requested payroll records as the agent of the system. Rather, Baker does so in the performance of its own statutory duties under section 2258.024 of the Government

Code. Therefore, we find that the requested payroll records are not information collected, assembled, or maintained for the system for purposes of section 552.002(a)(2). *Compare* Open Records Decision No. 558 (1990) (information not in governmental body's physical custody is subject to Gov't Code chapter 552 if third party prepared information on governmental body's behalf and makes it available to governmental body). Consequently, we conclude that the requested payroll records do not constitute public information under section 552.002 of the Government Code, and thus the system is not required to make the records available to the requestor. As we are able to make this determination, we do not address your arguments under 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).

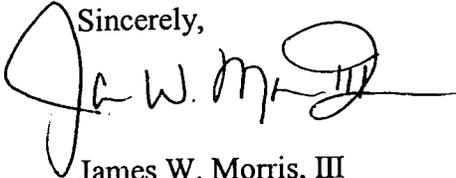
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

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

JWM/lmt

Ref: ID# 184275

Enc: Submitted documents

c: Mr. Ricardo Benitez
Texas Carpenters and Millwrights Regional Council
2600 Hamilton Street
Houston, Texas 77004
(w/o enclosures)