



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2003

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2003-9070

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192765.

The Texas Department of Transportation (the "department") received a request for information for a specified period of time pertaining to the qualifications of a certain business entity to function as a contractor or subcontractor on projects for the department. Although the department does not take a position with regard to the release of the requested information, it claims that this information is excepted from disclosure pursuant to section 552.110 of the Government Code. Pursuant to section 552.305(d) of the Government Code, the department notified an interested third party, Interstate Traffic Service LLC ("Interstate"), of the department's receipt of the request and of Interstate's right to submit arguments to this office as to why any information relating to Interstate should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). We have considered Interstate's arguments and have reviewed the submitted representative sample documents.¹

As a preliminary matter, we note that the department did not submit some information that Interstate claims is excepted from disclosure under sections 552.101 and 552.110 of the

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Government Code. Therefore, this ruling only addresses the information submitted to this office by the department that is responsive to the request for information. *See* Gov't Code § 552.301(e)(1)(D).

We now address Interstate's arguments with respect to the submitted information. Interstate claims that rule 507 of the Texas Rules of Evidence and rule 192.6 of the Texas Rules of Civil Procedure prohibit production of information that is the subject of this request. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). However, for information to be encompassed by section 552.101, the provision argued must explicitly require confidentiality for the information. A confidentiality requirement will not be inferred from statutory or constitutional structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987).

Further, we note that chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (chapter 552 does not affect scope of civil discovery), .006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) *overruled in part by* Open Records Decision No. 647 at 2 (1996) (section 552.101 does not encompass discovery privileges), 575 at 2 (1990) (stating explicitly that discovery privileges are not covered under predecessor to section 552.101), 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Act).

After carefully reviewing Interstate's arguments and the submitted information, we find that neither rule 507 of the Texas Rules of Evidence nor rule 192.6 of the Texas Rules of Civil Procedure are applicable to the submitted information in this instance. Although we acknowledge that the Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022" of the Government Code, we note that the submitted documents are not encompassed by section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Accordingly, we conclude that the department may not withhold any portion of the submitted information on the basis of either rule 507 of the Texas Rules of Evidence or rule 192.6 of the Texas Rules of Civil Procedure.

Interstate also claims that the requested information, or portions thereof, is excepted from disclosure pursuant to section 552.104 of the Government Code. We note, however, that section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). The department has not argued that the release of any portion of the requested information would harm its interests in a particular competitive situation under section 552.104. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.104 of the Government Code. Consequently, the department must release the submitted information to the requestor.

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).

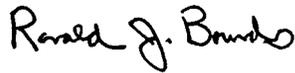
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 192765

Enc. Submitted documents

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