



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2004

Mr. Jonathan Kaplan
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-0630

Dear Mr. Kaplan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195223.

The City of San Antonio (the "city") received a request for "any and all contracts between the City of San Antonio and . . . the vendor installing the city's new edacs digital radio trunking system." The request also seeks "all documents detailing the expenses of the project." You inform us that you have provided all of the requested information other than the contract, release of which you assert may implicate the privacy or property interests of third party M/A Com, Incorporated ("M/A Com"). Although you assert that the submitted information may be excepted from disclosure under section 552.110 of the Government Code, you take no position and make no arguments regarding this exception and instead have notified M/A Com of the request and of its opportunity to submit comments to this office in accordance with section 552.305 of the Government Code. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.¹

¹We note that the contract at issue is subject to two prior rulings of this office. *See* Open Records Letter Nos. 99-3635 (1999), 99-3352 (1999). However, you inform us that the circumstances surrounding those rulings have changed; we therefore find that our prior rulings do not function as previous determinations in this instance. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, M/A Com has not submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that any portion of the submitted contract constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Because we have received no arguments and the information is not otherwise confidential by law, you must release the submitted contract.

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).

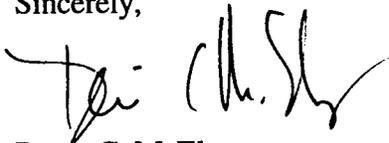
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 195223

Enc. Submitted documents

c: Ms. Amy S. Davis
News 4 WOAI-TV
P.O. Box 2641
San Antonio, Texas 78299-2641
(w/o enclosures)

Contract Administrator
M/A Com, Inc.
221 Jefferson Ridge Parkway
Lynchburg, Virginia 24501
(w/o enclosures)