



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 767020-2570

OR2005-00979

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 217952.

The City of Waco (the "city") received a request for "all records associated with RFQ No. 2004-072," including information relating to two named entities. You inform us that the city is releasing some of the requested information. You claim that other responsive information is excepted from disclosure under section 552.107 of the Government Code. You take no position with regard to the public availability of the rest of the requested information. You believe, however, that the request for this information implicates the proprietary interests of private third parties. You have submitted the information at issue. You also notified the private parties of this request for information and of their right to submit arguments to this office as to why their information should not be released.¹ We have considered your arguments and have reviewed the submitted information.

We first note that most of the submitted information is the subject of Open Records Letter No. 2005-00425 (2005). You have not informed this office, and we are not otherwise aware, of any change in the law, facts, or circumstances on which the prior ruling is based.

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Therefore, the city must dispose of the submitted information that is the subject of Open Records Letter No. 2005-00425 (2005) in accordance with that ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) when (1) precisely same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D); (2) same governmental body previously requested and received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

You believe that the rest of the submitted information may implicate the proprietary interests of a private third party, KW & Associates ("KW"). An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from KW. Thus, as there has been no demonstration that any of the submitted information that relates to KW is proprietary for purposes of the Act, that information is not excepted from public disclosure and must be released. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

In summary: (1) the city must dispose of the submitted information that is the subject of Open Records Letter No. 2005-00425 (2005) in accordance with that ruling; and (2) the rest of the submitted information must be released.

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

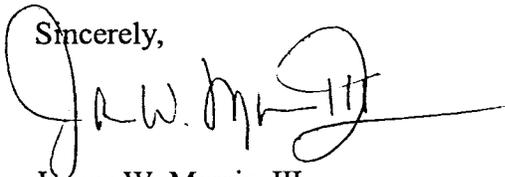
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 217952

Enc: Submitted documents

c: Mr. Todd Dorton Parrish
801 Washington Avenue
Waco, Texas 76701
(w/o enclosures)

Mr. Jeff Peters
Group & Pension Administrators, Inc.
1500 North Greenville Avenue, 4th Floor
Richardson, Texas 75081
(w/o enclosures)

Mr. Mark T. Bellman
Humana
1221 South MoPac, Suite 200
Austin, Texas 78746
(w/o enclosures)

Mr. Cammy Ferris
Insurors of Texas
P.O. Box 2683
Waco, Texas 76702-2683
(w/o enclosures)

Mr. Kelvin Williams
KW & Associates
1005 Columbus Avenue
Waco, Texas 76701
(w/o enclosures)

Ms. April G. Sanchez
MaxorPlus
320 South Polk Street, Suite 200
Amarillo, Texas 79101
(w/o enclosures)

Mr. Chuck Walker
SHA, L.L.C. dba FIRSTCARE
12940 North Highway 183
Austin, Texas 78750
(w/o enclosures)

Ms. Robin Mogavero
Scott & White Health Plan and Insurance Co.
200 West State Highway 6, Suite 300
Waco, Texas 76712
(w/o enclosures)

Ms. Sylvia Walker
Scott & White Prescription Services
2601-A Thornton Lane
Temple, Texas 76502
(w/o enclosures)

Mr. John Bass
UnitedHealthCare
5959 Northwest Parkway, Suite 107
San Antonio, Texas 78249
(w/o enclosures)