



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2005

The Honorable Eliot Shapleigh
The Senate of the State of Texas
P.O. Box 12068
Austin, Texas 78711

OR2005-03215

Dear Senator Shapleigh:

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# 222297.

You received a request for correspondence between your office and the University of Texas System (the "system") or the University of Texas at El Paso regarding a proposed hotel development. You inform us that you have released some of the requested information. You also inform us that you received the remaining information under a confidentiality agreement with the system. You state that "[o]ther than maintaining our obligation under the confidentiality agreement, we do not have an interest in keeping these documents exempted" from disclosure. You inform us that you notified the system of your request for this decision. You do not indicate whether you notified any interested private party. *See* 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). We have considered your arguments and have reviewed the information you submitted.

Initially, we must address a procedural matter. Section 552.301 of the Government Code prescribes the procedures for asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(b), the governmental body must ask for the attorney general's decision and state any exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the request for information. *See* Gov't Code § 552.301(b). If a governmental body does not request an attorney general

decision as prescribed by section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The statutory presumption that information is public can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, you have neither claimed any exception to disclosure nor asserted that any third-party interest is at stake. Therefore, the submitted information is presumed to be public under section 552.302.

You inform us, however, that the submitted information is the subject of a “Confidential Information Disclosure and Limited Use Agreement” between your office and the system. We note that a governmental body may not make information confidential by agreement unless it has specific statutory authority to do so. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990), 414 at 3 (1984). Section 552.008 of the Government Code authorizes a governmental body to enter into a confidentiality agreement with a member of the Legislature. This section provides as follows:

(a) Th[e Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with th[e Act] if the requesting member, agency or committee states that the public information is requested under th[e Act] for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. *The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:*

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008 (emphasis added). Thus, section 552.008 authorizes a governmental body that provides confidential information to a member, agency, or committee of the Legislature for legislative purposes to require the member, agency, or committee to enter into a written agreement to preserve the confidentiality of the information. *See id.* § 552.008(b). Section 552.008 does not authorize information to be made confidential by agreement. Rather, this section merely permits the execution of an agreement to maintain the confidentiality of information that is otherwise confidential under law. Gov't Code § 552.008(b). Thus, you may withhold the submitted information under your agreement with the system only if the information itself is otherwise confidential.

You have provided a copy of your agreement with the system, along with documentation that you obtained the submitted information under section 552.008. The agreement recites that it encompasses "confidential information." The agreement also provides, among other things, that you have agreed "to hold in confidence any and all CONFIDENTIAL INFORMATION disclosed . . . and not to disclose CONFIDENTIAL INFORMATION to any other person or third party or use CONFIDENTIAL INFORMATION, except for internal discussion and evaluation purposes permitted pursuant to this Agreement or with written permission from [the system]." (Capitalization in original.) However, no interested party has asserted, and it is not otherwise clear to this office, that any of the submitted information is confidential by law. Thus, the submitted information may not be withheld from disclosure on the basis of your agreement with the system. Therefore, as you have not provided any

compelling reason to withhold the submitted information, you must release this 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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# 222297

Enc: Submitted documents

c: Mr. Gary Scharrer
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