



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2005

Ms. Judy Tokar
City Secretary
City of Helotes
P.O. Box 507
Helotes, Texas 78023

OR2005-03614

Dear Ms. Tokar:

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# 222721.

The City of Helotes (the "city") received a request for information related to the construction of a Wal-Mart Supercenter. You indicate some of the requested information has been released. You do not claim that the remaining requested information is excepted from disclosure but ask whether information provided to an independent contractor is subject to the Act. You state and provide documentation showing, that you notified the contractor, Pape-Dawson, of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered your claims.

Initially, we address whether the information at issue is subject to the Act. You state that the city hired an independent engineer to complete a traffic study. You also state that Wal-Mart agreed to provide the independent engineer with a copy of its own traffic study. You indicate that the city does not have a copy of the traffic study. We understand you to contend that the study is not subject to disclosure under the Act. The Act only applies to public information. *See* Gov't Code § 552.021. Section 552.002 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." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act, if a governmental body owns or has a right of access to the information. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988).

We note that the Act does not ordinarily require a governmental body to obtain information that is not in its possession. *See* Open Records Decision Nos. 445 (1986), 317 (1982). However, in some instances, the Act does apply to information collected or maintained by third party consultants or contractors of governmental bodies. *See* Open Records Decision No 462 (1987). Where a third body has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. *See* Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure under the Act. *See* Open Records Decision Nos. 585 (1991), 445 (1986) (information prepared by private entity at request or under direction of city subject to disclosure), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that a governmental body can waive its right of access to information gathered on behalf of a governmental body). Although you state that the independent contractor maintains the responsive information, you do not address whether the city has a right of access to the information. Thus, to the extent the city has a right of access to the traffic study at issue, the traffic study constitutes "public information" under section 552.002 of the Government Code and must be released unless an exception to disclosure applies. However, to the extent the city does not have a right of access to the traffic study at issue, we determine it is not public information and need not 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, 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 222721

c: Ms. Eva G. Juarez
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