



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2006

Ms. Paula J. Alexander  
General Counsel  
Metropolitan Transit Authority of Harris County  
P. O. Box 61429  
Houston, Texas 77208-1429

OR2006-04567

Dear Ms. Alexander:

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# 248031.

The Metropolitan Transit Authority of Harris County ("Metro") received several requests from the same requestor for the winning proposals and subsequent contracts pertaining to five specified project numbers: RP0600005, RQ0500009, RQ0500013, RQ0600001, and RQ0600004. You inform us that project number RQ0500009 has been cancelled and reissued as RQ0500013. Therefore, information relating to RQ0500009 does not exist. You also inform us that Metro is currently engaged in negotiations regarding project numbers RP0600005, RQ0500013, RQ0600004, and is still negotiating with one bidder with regard to a portion of RQ0600001. Therefore, as winning bidders have not been selected for these projects, winning proposals and subsequent contracts relating to these projects do not exist. The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Accordingly, we do not address the availability of this non-responsive information, and Metro need not release it in response to this request. You

further inform us that Metro will release to the requestor copies of the contracts that have been executed related to RQ0600001.<sup>1</sup>

You claim that Exhibit 2 may be excepted from disclosure under section 552.110 of the Government Code, but take no position as to whether this information is excepted under this exception. However, pursuant to section 552.305 of the Government Code, you notified Milby Clinic ("Milby"), Concentra Health Services ("Concentra"), and Nova Health Care Center ("Nova"), the interested third parties, of the request and of their opportunity to submit comments to this office. 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). Metro has submitted the requested information for our review. We have reviewed the submitted information.

An interested third party is allowed ten 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 decision, Milby, Concentra, and Nova have not submitted to this office any reasons explaining why its information should not be released. Therefore, the interested third parties have provided us with no basis to conclude that it has a protected proprietary interest in any of the information in Exhibit 2. See, e.g., Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that Metro may not withhold any portion of Exhibit 2 on the basis of any proprietary interest Milby, Concentra, or Nova may have in the information.

We note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, Metro must withhold the social security number contained in the submitted information under section 552.147.<sup>2</sup>

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<sup>1</sup>Because Metro does not object to the release of this information, it must be released to the requestor. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

We also note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, Metro must withhold the marked social security number pursuant to section 552.147 of the Government Code. Metro must release the remainder of Exhibit 2 to the requestor, but in doing so, the information must be released in accordance with applicable copyright laws for any information protected by copyright.

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).

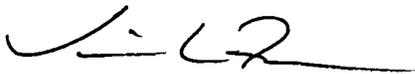
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 248031

Enc. Submitted documents

c: Onvia  
Attn: FOIA Request Coordinator  
1260 Mercer Street  
Seattle, Washington 98109  
(w/o enclosures)

Mr. Bruce Meynard  
Vice President  
Nova Health Care Centers  
5771 Enid Street  
Houston, Texas 77009  
(w/o enclosures)

Ms. Serena Garza  
Health Services Manager  
Concentra Medical Centers  
2004 Leeland  
Houston, Texas 77003  
(w/o enclosures)

Milby Clinic  
c/o Ms. Paula J. Alexander  
General Counsel  
Metropolitan Transit Authority of Harris  
County  
P. O. Box 61429  
Houston, Texas 77208-1429