



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2006

Ms. Cindy Krueger
Administrative Services Director
Alamo Area Council of Governments
8700 Tesoro, Suite 700
San Antonio, Texas 78217

OR2006-04646

Dear Ms. Krueger:

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# 248275.

The Alamo Area Council of Governments (the "AACOG") received a request for the winning proposal and subsequent contract for the Lawn and Garden Equipment Survey project. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.105, 552.107, 552.108, 552.109, 552.111, 552.113, 552.116, 552.117, 552.122, 552.128, 552.129, 552.130, 552.131, 552.136, 552.137, and 552.139 of the Government Code. You also claim that the requested information may contain the proprietary information of a third party. Pursuant to section 552.305 of the Government Code, you notified Ipsos-Insight of the request and of its right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also 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 under Act in certain circumstances).*

Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See Gov't Code § 552.301(e)(1)(A)-(D).* You have not provided this office with comments stating why

your claimed exceptions apply to the requested information, nor have you provided the requested information or a representative sample of such information to this office for review. We therefore find that the AACOG failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance, you raise numerous discretionary exceptions to disclosure for the requested information. Discretionary exceptions protect a governmental body's interest and may be waived by failure to comply with section 552.301 of the Government Code. See Open Records Decision No. 522 (1989) (discretionary exceptions in general). Because you have failed to comply with the procedural requirements of section 552.301, you have waived your discretionary exceptions to disclosure. You also raise numerous mandatory exceptions to disclosure for the requested information. A mandatory exception may constitute a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). However, because you have not submitted the requested information to this office, we have no basis for finding it confidential under any of the claimed mandatory exceptions. Furthermore, we have not received comments from Ipsos-Insight explaining how release of the requested information would affect its proprietary interests. See Open Records Decision Nos. 552 at 5 (1990) (if governmental body takes no position under section 552.110(a) of the Government Code, third party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information under section 552.110(b) of the Government Code, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of information would cause that party substantial competitive harm). Thus, we have no choice but to order the AACOG to release the responsive information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 247275

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