



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2009

Mr. Jesus Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2009-05060

Dear Mr. Toscano:

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# 340041.

The City of Dallas (the "city") received a request for: (1) the Dallas Museum of Art's (the "DMA") contract for the exhibition of "Tutankhamun and the Golden Age of the Pharaohs," (2) all documents that discuss the terms of the contract, (3) all contracts between the city and the DMA regarding the exhibit, and (4) documentation of expenses related to the exhibit. You state you have released some of the requested information to the requestor. You state that you do not have information responsive to a portion of the request.<sup>1</sup> Although you take no position as to whether the requested information is excepted under the Act, you state that release of this information may implicate the privacy or proprietary interests of a third party. Accordingly, you inform us, and provide documentation reflecting, that you have notified the DMA of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

explain applicability of exception in the Act in certain circumstances). We have received correspondence on behalf of DMA. We have also received comments from the requestor as well as Arts and Exhibitions International, L.L.C. and AEG Exhibitions L.L.C. (collectively "AEI/AEG"). See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments.

We address your contention that the requested contract between DMA and the AEI/AEG is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of 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.

*Id.* § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). 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 No. 462 (1987). Where a third party has prepared information on behalf of a governmental body and the governmental body has a right of access to it, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990).

In this instance, although the requestor argues that the city has a right of access to the requested contract pursuant to a cultural services agreement between the city and the DMA, you inform us that the city has no right to access to this information. The DMA also asserts that the culture services agreement does not provide the city with access to any underlying contracts the DMA may have with AEI/AEG. Based upon these representations as well as our review of the submitted information, we determine that this information is not public information for purposes of section 552.002. Therefore, such information need not be provided in response to this request.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 340041

cc: Requestor

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