



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2009

Ms. Carolyn Foster  
Associate General Counsel  
Dallas County Hospital District  
5123 Harry Hines Boulevard  
Dallas, Texas 75235

OR2009-12263

Dear Ms. Foster:

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# 353961.

The Dallas County Hospital District (the "district") received a request for information relating to the selection of a construction manager for the Parkland Hospital campus, including records of presentations by Balfour Beatty Construction, Austin Commercial, L.P., H. J. Russell & Company, and Azteca Enterprises, Inc. (collectively "BARA") and McCarthy/Turner, a joint venture comprised of McCarthy Building Companies, Inc., and Turner Construction Company. You state that the district does not have possession of the requested Power-point presentations.<sup>1</sup> You also state that some of the requested information has been released. Although you take no position on the public availability of the submitted information, you believe that the information may implicate BARA's interests. You inform us that BARA was notified of this request for information and of its right to submit

---

<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990); 452 at 3 (1986), 362 at 2 (1983).

arguments to this office as to why its information should not be released.<sup>2</sup> We have reviewed the information you submitted.

We first note that the district did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a)-(b), (e). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, 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 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 if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure under section 552.302 of the Government Code and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the district received the instant request for information on June 1, 2009; therefore, the district's deadlines under subsections 552.301(b) and 552.301(e) were June 15 and June 22, respectively. The district requested this decision by United States mail meter-marked June 26. Thus, the district did not comply with section 552.301, and the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will consider whether the district must withhold any of the submitted information on either of those grounds.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from BARA. Thus, BARA has not demonstrated that any of the submitted information is confidential or proprietary for the purposes of the Act. *See id.*

---

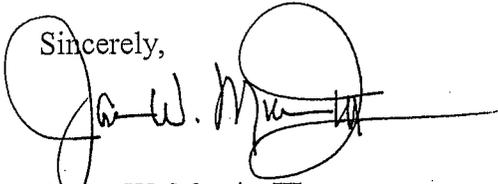
<sup>2</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

§§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the district may not withhold any of the submitted information on either of those grounds. Thus, as the district does not claim an exception to disclosure, the submitted information must be released.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 353961

---

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Walt Massey  
BARA, a Joint Venture  
3535 Travis Street Suite 300  
Dallas, Texas 75204  
(w/o enclosures)

---