



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Mr. Charles Wallace
Assistant City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78130

OR2009-17162

Dear Mr. Wallace:

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# 363320.

The City of New Braunfels (the "city") received a request for 1) the audiotape from the New Braunfels Municipal Airport Control Tower (the "tower") recorded between a specified time on a specified date and 2) telephone conversation records between the tower operators and city employees or personnel of the requestor's company during a specified time. You state the city does not have possession of the requested information. You also state the request may implicate the proprietary interests of Robinson Aviation, Inc. ("RVA"), which collects and maintains the requested information.¹ Accordingly, you inform us and provide documentation reflecting you have notified RVA 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 explain applicability of exception in the Act in certain circumstances). We have received comments from RVA and considered the submitted arguments.

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides "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:

¹RVA states it has no information responsive to item 2 of the request.

- (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 information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information 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).

You state the city does not maintain the information. Rather, you explain RVA, which performs air-traffic control services for the city, collects and maintains the requested information but does not maintain it on behalf of the city. You have provided the contract between the city and RVA for air-traffic control services. You state, and the submitted contract reflects, the city does not have a contractual right of access to the information maintained by RVA. Thus, we determine the requested information is not public information for purposes of section 552.002 of the Government Code. 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, 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 363320

Enc. Submitted documents

c: Requestor
(w/o enclosures)