



February 26, 2013

Harold Barker  
9191 Garland Road, # 1126  
Dallas, Texas 75218  
hbarker\_2011@yahoo.com


Re: Request for an Open Records Decision

Dear Mr. Barker:

This letter responds to your open records request received by the city of Dallas ("city") on February 4, 2013 for information pertaining to the city's contract with Desman, Inc. Some of the requested documents have been sent to the Attorney General for an open records decision regarding their release. A copy of the letter to the Attorney General is enclosed for your information. The Park and Recreation Department will provide you with the reproduction cost for the remaining requested information.

If you have any questions regarding this matter please contact me or Assistant City Attorney Heather Silver at 214-670-3519.

Sincerely,



WARREN M. S. ERNST  
Chief of the General Counsel Division

Attachments

c: Thomas P. Perkins, Jr., City Attorney  
Heather Silver, Assistant City Attorney  
Carolyn Brescia, Park and Recreation Department  
Jeri Carter, Public Information Office



City of Dallas

February 26, 2013

Honorable Greg Abbott  
Attorney General of Texas  
300 W. 15th Street  
Clements Building, 12th Floor  
P.O. Box 12548  
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Mr. Attorney General Abbott:

On February 11, 2013, our office submitted a request for an open records decision to you (Exhibit A) regarding a request by Harold Barker for information pertaining to the city's contract with Desman, Inc.

This office is responsible for representing the legal interests of the city of Dallas ("city"). Our February 11, 2013 submission is incorporated into this submission, including Mr. Barker's request. We listed the exceptions under the Public Information Act, Chapter 552, Texas Government Code (the "Act") which might apply to the requested information in our February 11, 2013 correspondence. In this submission, we shall expand upon and explain the reasons we believe these exceptions apply to the requested information. In our opinion, some of the requested information is excepted from required public disclosure under Section 552.111 of the Act. Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure. Mr. Barker will be provided with the remaining requested information upon receipt of the reproduction cost.

Desman Associates, Inc. ("Desman") has been retained by the city to produce a financial feasibility study for parking revenue to support the construction of a parking structure and/or surface parking to accommodate the Dallas Arboretum Botanical Gardens.

Exhibits B and C consist of a representative sample of the requested documents that we believe are exempt from disclosure under Section 552.111 of the Act which excepts from required disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 of the Act incorporates the deliberative process privilege, which protects from disclosure intra-agency and interagency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. In Open Records Decision No. 631 (1995), your office determined that Section 552.111 of the Act may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Desman performed

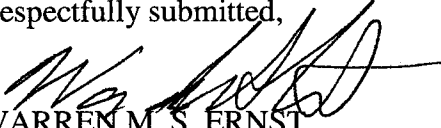
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services and prepared the draft study at the request of the city. The purpose of Section 552.111 of the Act is to encourage frank and open discussions within the city in connection with its decisionmaking process. The information in Exhibits B and C relates to general policy issues and reflects the policymaking process of the city. These documents contain opinions, advice, and recommendations concerning the financial feasibility for parking revenue to support the construction of a parking structure and/or surface parking to accommodate the Dallas Arboretum Botanical Gardens. We believe that disclosing this information to the public would severely hamper the policymaking process. City staff and Desman would be reluctant to engage in a thorough and frank discussion of alternatives if any initial observation or recommendation was immediately available to the public.

It is our opinion that the documents in Exhibits B and C are also exempt from disclosure under Section 552.111 of the Act because they are draft documents. A draft of a document that has been released or will be released in final form to the public is excepted from disclosure in its entirety under Section 552.111 of the Act because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final documents. Open Records Decision No. 559 (1990). The draft documents in Exhibit B will be released in final form to the public. The information in Exhibit C consists of communications that reveal portions of draft documents and discusses components of draft documents. The draft documents that are the subject of the communications will be released in final form to the public.

If you have any questions regarding this matter please contact me or Assistant City Attorney Heather Silver at 214-670-3519.

Respectfully submitted,

  
WARREN M. S. ERNST  
Chief of the General Counsel Division

Attachments

c: (with Exhibit A only)  
Thomas P. Perkins, Jr., City Attorney  
Heather Silver, Assistant City Attorney  
Carolyn Brescia, Park and Recreation Department  
Jeri Carter, Public Information Office

Harold Barker  
9191 Garland Road, # 1126  
Dallas, Texas 75218  
hbarker\_2011@yahoo.com

**“EXHIBIT A”**



February 11, 2013

Honorable Greg Abbott  
Attorney General of Texas  
300 W. 15th Street  
Clements Building, 12th Floor  
P.O. Box 12548  
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Mr. Attorney General Abbott:

By email (Exhibit A) received by the city of Dallas ("city") on February 4, 2013, Harold Barker requested information pertaining to the city's contract with Desman, Inc.

The city is gathering the requested information and it is anticipated that some of the requested information will be exempt from mandatory disclosure under the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The City Attorney's Office is responsible for representing the legal interests of the city and since we have not been able to review all the requested information, we would assert that certain information contained in Mr. Barker's request may be protected from disclosure under Sections 552.101 through 552.153 of the Act, in particular Sections 552.107 and 552.111 of the Act. Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure.

City offices will be closed on February 18, 2013 for Presidents' Day. Our comments stating the reasons why the Act exempts the requested information from disclosure, and copies of the requested information (or samples if voluminous), will be sent to your office by February 26, 2013, as required by Section 552.301(e) of the Act.

If you have any questions regarding this request for an open records decision please contact me or Assistant City Attorney Heather Silver at 214-670-3519.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Warren M. S. Ernst'.

WARREN M. S. ERNST  
Chief of the General Counsel Division

Attachments

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Honorable Greg Abbott  
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c: Thomas P. Perkins, Jr., City Attorney  
Heather Silver, Assistant City Attorney  
Carolyn Brescia, Park and Recreation Department  
Jeri Carter, Public Information Office

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**“EXHIBIT A”**

**From:** Hal Barker [[mailto:hbarker\\_2011@yahoo.com](mailto:hbarker_2011@yahoo.com)]

**Sent:** Monday, February 04, 2013 7:02 AM

**To:** Brescia, Carolyn

**Cc:** Carter Lawson, Jeri

**Subject:** Open Records Request - Arboretum Parking Study Desman Associates

Dear Ms. Brescia, .

This is a request under the Texas Public Information Act for copies of the following records.

This request refers to the Consultant Contract Resolution 12-1976, with Desman, Inc, dba Desman Associates, Inc, a study conducted on Arboretum Parking, executed on or about August 8, 2012.

1. All documents and communications between the City of Dallas and Desman Associates, relating to the above contract.
2. All documents used in the preparation of the contract report and conclusions along with any records provided to any third party such as a bond underwriting company or agency.

Note:

"Section 8, Ownership of Documents, states "all deliverable prepared or assembled by Consultant under this Contract, and any other related documents or items shall become the sole property of the City and shall be delivered to City, without restriction to further use."

3. Please provide copies of all documents noted in Section 8, Ownership of Documents.

I also note the specifications for time period under Section 4, Term, is forty-two (42) working days, and this date has apparently passed quite some time ago.

4. Please provide me with any documents relating to an extension of the contract.
5. Copies of the payments made to Desman Associates, including final payments for completion of contract.



If the cost exceeds \$100, please let me know.

Hal Barker

Harold Barker  
9191 Garland Road 1126  
Dallas, TX

[hbarker\\_2011@yahoo.com](mailto:hbarker_2011@yahoo.com)