



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2489 • (512) 463-8086

May 1, 2006

Ms. Terri Hall
San Antonio Toll Party
18160 US Hwy 281 North, Suite 108-251
San Antonio, Texas 78232

RE: Public Information Request of Terri Hall, Dated April 18, 2006, and Received by
the Texas Department of Transportation on April 18, 2006

Dear Ms. Hall:

Please be advised that we have filed a request for an opinion with the Office of the Attorney General regarding your request for information. When we have that opinion, you will be informed, and we will make an appropriate response to your request.

Sincerely,

Sharon Alexander
Associate General Counsel

cc: Katherine Minter Cary, OAG



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

May 1, 2006

Ms. Katherine Minter Cary, Chief
Open Records Division
Office of the Attorney General
Price Daniel Building
209 W. 14th Street, 6th Floor
Austin, Texas 78711-2548

Hand Delivered

RE: Public Information Act Request of Terri Hall, Dated April 18, 2006, and Received by the Texas Department of Transportation on April 18, 2006

Dear Ms. Cary:

TxDOT received a Public Information Act request from Terri Hall of San Antonio Toll Party on April 18, 2006. April 21, 2006 was a holiday for TxDOT and thus does not count toward the ten business day deadline by which to submit to your office a request for opinion. The request is enclosed as **Exhibit A**. In accordance with Section 552.301 of the Government Code, TxDOT is seeking a ruling on the excepted portions of the request. The San Antonio District is releasing documents not subject to an exception.

Terri Hall has requested the entire stakeholders survey and results for 281 done by HNTB and who participated in the stakeholder meetings and who, in general terms, completed the survey. Ms. Hall also requested any feasibility study for toll lanes on IH-10. The excepted information is covered by Section 552.111 of the Government Code, which excepts internal agency memoranda that constitute pre-decisional advice, recommendations, and opinions reflecting the policymaking process of a governmental body. The requested information meets this standard because it constitutes pre-decisional advice, recommendations, and opinions reflecting TxDOT's policymaking process. A representative sample of the excepted information is enclosed as **Exhibit B**.

Internal pre-decisional recommendations are excepted from disclosure.

Section 552.111 of the Government Code reads:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.

In ORD-615 (1993) the Attorney General ruled definitively that this includes intra-agency

and interagency communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of such information will not inhibit free discussion of policy issues among agency personnel. A government body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. Furthermore, Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under Section 552.111. See ORD-313 (1982). Information prepared for an agency by outside consultants can also qualify for the Section 552.111 exception. ORD-462 (1987).

In ORD-559 (1990) the Attorney General rules that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, and thus is excepted from disclosure under Section 552.111.

Exhibit B contains drafts which consist of intraagency communication of internal pre-decisional deliberations regarding agency policy. It consists of advice, recommendations, and opinions between the drafter and TxDOT Administration. Exhibit B also contains internal planning documents created by both TxDOT's consultant under contract for this preliminary deliberations and documents by which TxDOT obtained input from stakeholders for internal pre-decisional deliberations regarding agency policy. Release of this kind of information would severely hamper the ability of TxDOT personnel to draft documents and engage in preliminary deliberations regarding agency policy and make recommendations, because it would discourage frank and open discussions during the preliminary planning stages.

The excepted information does not fall within Sections 552.022 and 552.0225.

Section 552.022 of the Government Code identifies certain limited categories of information that must be released, notwithstanding the existence of an applicable exception, unless the information is protected under other law. The categories of Section 552.022 include completed investigations, reports, evaluations, and audits; limited information about state employees; information contained in accounts, invoices, and contracts and relating to the expenditure of public money; names and voting records of agency officials; completed information used to estimate public expenditures; certain sales and use tax information; information giving the agency's organization and function; substantive and procedural rules; opinions in contested cases; formal policy statements; staff manuals; bills for attorney's fees; information in court records; and

settlement agreements. Section 552.0225 states that certain categories of information held by a governmental body relating to its investments are not excepted under Chapter 552.

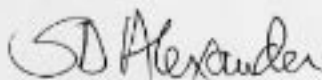
The documents in question do not fall into any 552.0225 category. Drafts are not completed documents; therefore they are not subject to Section 552.022.

Conclusion.

In accordance with Section 552.301(d)(1) of the Government Code, TxDOT has notified the requestor that it wishes to withhold the excepted information and is seeking an attorney general ruling. This correspondence is enclosed. TxDOT has also sent a copy of this letter to the requestor in accordance with Section 552.301(d)(2).

Please feel free to contact me if you have any questions.

Sincerely,



Sharon Alexander
Associate General Counsel

Enclosures

cc: Terri Hall
San Antonio Toll Party
18160 US Hwy 281 North, Suite 108-251
San Antonio, Texas 78232
(w/o enclosures)



Texas Department of Transportation

P.O. BOX 29928 • SAN ANTONIO, TEXAS 78229-0928 • (210) 615-1110

May 1, 2006

INITIAL RESPONSE

Terri Hall
18160 US Hwy 281 N. Suite 108-251
San Antonio, Texas 78232

Re: - Public Information Act Request (PIAR) - Our Case # PIAR 04-06-12
- Your April 27, 2006 telephone conversation with David Bullerwell, Open Records Coordinator
- Our April 18, 2006 notification letter
- Your 4/18/2006 1:26 AM email request
Toll road projects throughout the San Antonio District of TxDOT

Dear Ms. Hall:

On April 18, 2006, you requested (1) the entire stakeholders survey and results for US 281 done by HNTB; (2) any feasibility study for toll lanes on IH 10; (3) any investment grade traffic and revenue studies for any toll projects within TxDOT San Antonio District; and (4) most current feasibility studies for 281/1604 Wurzbach Pkwy, I-35, Bandera Road.

Item 1: Power Point Presentation, Public Meeting on US 281, regarding Stakeholders survey.

Item 2: Information regarding feasibility study for toll lanes on IH 10 was contained on CD provided to you at no charge by Sharon Alexander, Associated General Counsel, on November 3, 2005. Please be advised that some information regarding this portion of your request has been forwarded to the Office of General Counsel to seek an opinion on its releasability.

Item 3: There are no records in this district regarding any investment grade traffic and revenue studies for toll projects in Bexar County or surrounding counties within the San Antonio District of TxDOT. No records exist at this district.

Item 4: Item 2: Information regarding feasibility studies for US 281, Loop 1604, Wurzbach Parkway, and IH 35 are contained on CD provided to you at no charge by Sharon Alexander, Associated General Counsel, on November 3, 2005. In addition, a February 28, 2006 SH 16 Feasibility Analysis, Final Report, for CSJ #s: 0291-10-055 and 0291-10-065, is available as per your April 27, 2006 telephone conversation with David Bullerwell, Open Records Coordinator, with cost estimates indicated below.

Based on our understanding of your request, we estimate that we will incur the following costs:

Personnel cost (@ \$15.00 per hour) (2 hours)	\$ 45.00
15-71-1780 (1 hour) - Administrative processing	
15-70-0659 (1 hour) - SAMIO	
15-70-0666 (1 hour) - Transportation Planning & Programming	
Overhead cost (20% of Personnel Charge):	\$ 6.00
Copying charge: (8 1/2" x 11" @ \$0.10 ea) (46 Page)	\$ 4.60
(11" x 17" @ \$0.50) (11 Sheets)	\$ 7.50
(8 1/2" x 11" Color @ \$0.50 ea) 35 Pages)	\$ 17.50
(11" x 17" Color @ \$1.00 ea) (21 Sheets)	\$ 21.00
Actual cost of miscellaneous supplies: (3-Ring Binder)	\$ 2.50
Document retrieval charge (if applicable):	\$ 0.00
Postage and shipping: (<i>Subtract if picked up in person.</i>)	\$ 5.68
Total estimated cost:	<u>\$109.78</u>

Based on our understanding of your request, the following records are available to response to your request:

- Power Point Presentation, Public Meeting on US 281, regarding Stakeholders survey. (24 Pgs - Color)
- February 28, 2006 SH 16 Feasibility Analysis prepared by Hyultt-Zollars. (1 Binder)

Please be advised that a license agreement must be executed between your firm and TxDOT before records can be provided if the above charges are accepted and records are still needed.

The above is only an estimate of our expected costs, and actual costs may be higher or lower. If actual costs differ from this estimate by more than 20%, we will provide you with a new estimate.

A less costly alternative to your original request would be to eliminate one or more of the listed categories and thus reduce the cost by the amount shown next to that category. We would also be pleased to discuss other ways of reducing the cost by clarifying the individual categories and eliminating any information that you do not really want. It is crucial that we clarify the exact scope of your request and determine finally if you wish to proceed in light of the estimated cost.

May 1, 2006

You must provide us with a check in the amount of the estimated charges shown above made out to the Texas Department of Transportation, before records are to be provided or access to review records granted. We must hear from you in writing, within 10 business days whether you accept the estimated charges, wish to modify the request, or have sent to the Office of Attorney General a complaint alleging that you have been overcharged. Please send your response with check or bond by mail to the address listed below, or in person. Otherwise, your request will be considered withdrawn.

Texas Department of Transportation
4615 N.W. Loop 410
P.O. Box 29928
San Antonio, Texas 78229-0928
Attn: District 15 Cashier (Roxane Johnson)

Attached is a License Agreement for the Use of the Texas Department of Transportation Copyrighted Plans. If you accept the fees associated with the processing of this request and wish to obtain a copy of the records identified on page 1 of 5 of the license agreement that are part of the SH 16 Feasibility Analysis Final Report, please have the responsible agent from your firm fill out and sign the applicable information of pages 4 and 5 of the license agreement and return the complete original signed copy of the license agreement to the address listed above along with a check for **\$109.78**.

If questions arise, please contact Frank Holzmann, P.E., San Antonio Mobility Initiative (SAMI) Office, at (210) 731-5113, or Judy Friesenhahn, P.E., Transportation Planning Director, at (210) 615-5814.

Sincerely,



Cathy T. Floyd, CPA, Director of Administration
San Antonio District, TxDOT

CTF:dls

- cc: - Julia M. Brown, P.E., Deputy District Engineer
- Clay Smith, P.E., Director, TP&D
- Frank Holzmann, P.E., SAMIO
- Judy Friesenhahn, P.E., TP&D
- Patti Ball, TTA

STATE OF TEXAS §

COUNTY OF BEXAR §

**LICENSE AGREEMENT FOR THE USE OF THE
TEXAS DEPARTMENT OF TRANSPORTATION'S
COPYRIGHTED PLANS**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and Terri Hall, hereinafter called the "Licensee."

WITNESSETH

WHEREAS, the State, in accordance with Transportation Code, §201.205, may:

1. apply for, register, secure, hold, and protect patents, copyrights, trademarks, or other evidence of protection or exclusivity issued under the laws of the United States, any state, or any nation, including ideas, publications, and other original innovations fixed in a tangible medium; and
2. enter into nonexclusive license agreements with any third party for the receipt of fees, royalties, or other thing of monetary or nonmonetary value; and
3. waive or reduce the amount of fees, royalties, or other monetary or nonmonetary value to be assessed if it determines that such waiver will further the goals and missions of the department and result in a net benefit to the State; and

WHEREAS, the State has authored, produced, or participated in the production of a work, or works, consisting of SH 16 Feasibility Analysis Final Report, Diagrammatic Layout Drawings, Typical Sections, and Environmental Maps (hereinafter "copyrighted plans"), and is the owner of certain rights in the copyrighted plans (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests related thereto; and

WHEREAS, the Licensee desires to obtain a license from the State to use a copy of the copyrighted plans; and

WHEREAS, the State will provide a nonexclusive, non-transferable license to the Licensee to use a copy of the copyrighted plans, provided the Licensee agrees to the terms and conditions established in this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon the date of final execution by the State and shall continue in effect until terminated or modified as hereinafter provided.

Article 2. RIGHTS GRANTED

- A. The State hereby grants to the Licensee a nonexclusive right, license, and privilege worldwide to use a copy of the copyrighted plans for TxDOT projects, and the State will

provide the Licensee with such a copy for that purpose. The license granted by the State is limited to the Licensee's personal, internal use. The Licensee shall not use the copyrighted plans or any data or other information obtained from the copyrighted plans for any other purpose.

- B. The Licensee agrees that this License does not transfer or convey any ownership or any other rights other than those rights expressly granted by this agreement. Title to and all rights of ownership in the copyrighted plans, and all copies or any part thereof, are and remain with the State. The Licensee does not have, nor shall it attempt to obtain, any title to the copyrighted plans. The Licensee will not use, reproduce, distribute and/or sell the copyrighted plans, or any data or other information obtained from the copyrighted plans, except as expressly authorized in this agreement.

Article 3. LICENSE FEE

There shall be no separate license fee for the copyrighted plans. The Licensee shall pay copying, personnel, overhead, and other charges for the plans as determined by the State in accordance with the Texas Public Information Act. This sum shall be paid to the State prior to release of the copyrighted plans to the Licensee.

Article 4. RESTRICTIONS ON USE OF LICENSE; DISCLAIMER

- A. The State makes no warranty of any kind, express or implied, with respect to the data and other information contained in the copyrighted plans, and specifically makes no warranty that said copyrighted plans shall be marketable or fit for any particular purpose. Furthermore, any description of said copyrighted plans shall not be deemed to create an express warranty that said copyrighted plans will conform to said description. The Licensee recognizes that the copyrighted plans are preliminary and are subject to change at any time without notice.
- B. The Licensee assumes all risk and liability for any losses, damages, claims, or expenses resulting from the use of the copyrighted plans licensed by the State pursuant to this agreement. Since revisions or additions to the copyrighted plans may occur at any time, the Licensee assumes all risk and liability related to using outdated data or information.
- C. The copyrighted plans are copyrighted by the Texas Department of Transportation and may not be resold, redistributed, or published by the Licensee, whether for compensation or for free, nor may the Licensee be compensated for any other use of the copyrighted plans.
- D. The Licensee shall not disclose information obtained from the State under this contract without the express written consent of the State.

Article 5. COPYRIGHT INFRINGEMENT

Each party to this agreement shall notify the other of any infringement or potential infringement by a third party of the copyright or any other rights owned by the State relating to the copyrighted plans. Each party shall cooperate in resolving any and all breaches or infringements. The Licensee agrees to provide any information and execute any instruments necessary for the State's prosecution of any action for infringement or breach of this agreement by any third party.

Article 6. RESPONSIBILITY FOR MAINTENANCE OF THE WORK

The State is not responsible for providing the Licensee any upgrades or modifications to the copyrighted plans after a copy of the copyrighted plans has been provided to the Licensee under this agreement. Should the Licensee make any modifications to the copyrighted plans, the Licensee shall provide the State with a copy of such modified version of the work.

Article 7. ASSIGNMENT PROHIBITION

The Licensee is prohibited from assigning the licensed rights to the copyrighted plans, or licensing any of the rights conferred by this agreement, to any third party without the advance written approval of the State. Any attempted sublicense, assignment, or other transfer of the copyrighted plans, any of the data or other information contained in the copyrighted plans, or of the rights or obligations of this agreement without the State's consent shall be void and shall be grounds for termination of this agreement.

Article 8. COVENANT AGAINST CHALLENGE

By entering into this agreement, the Licensee is prohibited from challenging or contesting in any manner the validity of the copyright in the copyrighted plans or its ownership by the State.

Article 9. TERMINATION

- A. Including the provisions established herein, this agreement may be terminated by either of the following conditions:
- (1) Mutual agreement and consent of the parties hereto.
 - (2) By the State, upon written notice to the Licensee as consequence of the Licensee's failure to comply with the requirements of this agreement, unless the Licensee's failure to comply with the agreement is due to no fault of its own.
- B. If the termination is due to the failure of the Licensee to fulfill its contractual obligations, the State will notify the Licensee that a possible breach of contract has occurred. The Licensee must remedy the breach as outlined by the State to the State's satisfaction within thirty (30) days from receipt of the State's notification. The State will declare this agreement terminated upon the Licensee's failure to remedy the breach within the thirty-day period.
- C. Termination of the agreement shall extinguish all rights, duties, obligations and liabilities of the State and the Licensee under this agreement. All rights granted to the Licensee shall revert to the State as owner of the copyrighted plans.
- D. Termination or expiration of this agreement shall not extinguish any of the Licensee's or the State's obligations under this agreement that by their terms continue after the date of termination or expiration.

Article 10. INDEMNIFICATION

The Licensee shall indemnify and save harmless the State from any and all losses, liabilities, damages, claims, demands, costs, expenses, or other liabilities arising out of or connected with the Licensee's use of the copyrighted plans during the term of this agreement, including, but not limited to, any illegal or improper use of the copyrighted plans or any data or information contained in the copyrighted plans, and any manipulation or other modification of the copyrighted plans. Since revisions or additions to the copyrighted plans may occur at any time, the Licensee agrees to indemnify and save harmless the State and its officers, agents, and employees from any and all claims, damages, and attorneys' fees arising from the use of outdated data or information. The Licensee's indemnification of the State shall extend for a period of three (3) years beyond the date of termination of this agreement.

Article 11. REMEDIES

Violation or breach of contract by the Licensee shall be grounds for termination of the agreement and any increased costs arising from the Licensee's default, breach of contract or

violation of contract terms shall be paid by the Licensee. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies at law and in equity may be availed by either party and shall be cumulative.

Article 12. COMPLIANCE WITH LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative body in any manner affecting the performance of this agreement.

Article 13. SUPPLEMENTAL AGREEMENTS

Any changes in the contract period, character, or agreement terms shall be enacted by a written supplemental agreement executed by both parties. Any supplemental agreements must be executed during the contract period established in Article 1, Contract Period.

Article 14. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 15. PRIOR AGREEMENTS SUPERSEDED

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings and/or written or oral agreements between the State and the Licensee respecting the within subject matter.

Article 16. SIGNATORY AUTHORITY

The undersigned for the Licensee represents and warrants that he/she is an officer of the organization for which he/she has executed this agreement and that he/she has the full and complete authority to enter into this agreement on behalf of the Licensee.

Article 17. NOTICES

All notices to either party by the other party required under this agreement shall be delivered personally or sent by U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

Licensee:	State:
_____	Texas Department of Transportation
_____	Attn: David B. Casteel, P.E.
_____	District Engineer
_____	4615 N.W. Loop 410
_____	San Antonio, Texas 78229-0928

and shall be deemed to be received by the addressee on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

IN TESTIMONY WHEREOF, the State and the Licensee have executed triplicate counterparts of this agreement.

_____ (Licensee)

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____

Date: _____