



November 13, 2000

Ms. Anne M. Constantine
Dallas/ Fort Worth International Airport Board
3200 East Airfield Drive
P. O. Drawer 619428
Fort Worth, Texas 75261-9428

OR2000-4396

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141209.

The Dallas-Fort Worth International Airport Board (the "board") received a request for the proposals for airport improvements submitted to the board by four companies, Near North Insurance Brokerage of Texas, Inc. ("Near North"), Marsh USA, Inc. ("Marsh"), The Hobbs Group/ William Rigg Company ("William Rigg"), and Willis Corroon Corp. of Texas ("Willis Corroon"). You state that you are in the process of releasing the clearly public portions of the four proposals, but inform us that one company has objected to the release of a portion of its proposal.¹ You raise no exception to disclosure on behalf of the board, but defer to William Rigg to present to us their argument against disclosure of their information.

We first note that the requestor specifically seeks the proposal of Willis Corroon. You state in your request for a decision that the "bid proposal submitted by Willis Corroon Corp. is still under consideration by [this office] as ID #138970". However, we are compelled to point out that ID # 138970, closed as ORL 2000-3379(2000), did not implicate the information of Willis Corroon. Willis Corroon was the requestor in that ruling. As you did not consider the information of Willis Corroon to be at issue here, you did not submit that information for our review, you make no argument regarding that information, and you apparently did not send Willis Corroon a notice of the request for their information under section 552.305. *See Gov't Code §§ 552.301, .305.* Because the board did not comply with

¹Near North had objected to release of portions of its proposal but subsequently agreed with the requestor as to what information the company would release. Therefore, we will not address that information in this ruling. We assume that you have released the information of Marsh, as this office directed you to release that information in ORL 2000-3379(2000). We also assume that you have released the information William Rigg does not object to releasing.

section 552.301 with respect to the information of Willis Corroon, that information is presumed to be subject to required disclosure and must be released absent a compelling reason to withhold the information. Gov't Code § 552.302.

Pursuant to section 552.305 of the Government Code, you did notify William Rigg that the board had received a public information request for their proposal information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). As of this date, we have not directly received any comments from William Rigg regarding the proprietary nature of their information. The board provided this office with a letter William Rigg sent the board, in which the company asserts that Attachment 4 to their proposal "should be withheld from public record and disclosure." "[d]ue to the fact that these forms are labeled as confidential." No specific exceptions were raised by William Rigg; however, you state that the company asserts sections 552.101 and 552.110. After careful review, we find that the company's statement is not sufficient to show that the information is excepted from disclosure pursuant to section 552.110 of the Government Code. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, none of William Rigg's information may be withheld from public disclosure under section 552.110.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Neither the board nor William Rigg has specifically identified a constitutional provision, statute, or judicial decision which makes the information confidential by law. This office has long held that a governmental body's promise to keep confidential information that is subject to the Public Information Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). Thus, information subject to the Public Information Act is not confidential simply because the party submitting it anticipates or requests that it be kept confidential. Accordingly, you may not withhold the submitted information under section 552.101.

As explained above, the information of Willis Corroon is subject to required release absent a compelling reason to withhold that information. This office has long held that a compelling reason may be demonstrated if the information is confidential by law or if third party interests are at stake. Open Records Decision No. 150 (1977). However, because we

have received no arguments from Willis Corroon and have not been provided their information as required by section 552.301(e)(1), we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. In summary, the board must release the Willis Corroon and William Rigg information to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

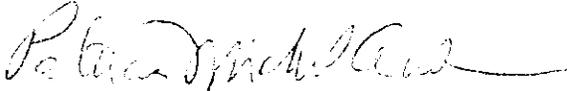
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/seg

Ref: ID#141209

Encl. Submitted documents

cc: Mr. Paul Kreiling
AON Risk Services of Texas
8th Floor-Lockbox #8
2711 North Haskell Avenue
Dallas, Texas 75204
(w/o enclosures)

Mr. Stephen V. Blackburn, CIC
Vice President & Acting General Manager
Near North Insurance Brokerage of Texas, Inc
One Galleria Tower, Suite 1010
13355 Noel Road
Dallas, Texas 75240
(w/o enclosures)

Mr. William Meadows, Vice President
William Rigg Company
309 West 7th Street, Suite 200
Fort Worth, Texas 76102
(w/o enclosures)

†

Mr. William E. Hammond
Marsh USA, Inc.
1601 Elm Street, Suite 2100
Dallas, Texas 75201
(w/o enclosures)

Mr. M. Douglas Hardy
Willis Corroon Corp. of Texas
13355 Noel Road, Suite 400
Dallas, Texas 75240
(w/o enclosures)