



April 10, 2001

Mr. Devin "Buck" Benson  
Law Offices of Davidson & Troilo  
7550 W. IH-10, Suite 800  
San Antonio, Texas 78229-5815

OR2001-1428

Dear Mr. Benson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145789.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for information relating to sales and service of fire extinguishers. The board takes no position as to whether any of the requested information is excepted from required public disclosure. The board believes, however, that this request for information may implicate the proprietary interests of the private entities that submitted the information to the board. By letters dated February 2, 2001, the board provided notice to four entities of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> *See* Gov't Code § 552.305(d); 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 to disclosure under Public Information Act in certain circumstances). You also submitted the requested information to this office.

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). None of the four entities that the board notified has submitted any comments to this office. We thus have no basis for concluding that any of the requested information relating to those entities must be withheld from disclosure. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code

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<sup>1</sup>Those entities, which you describe as "the appropriate third parties," are Allstate Fire Extinguisher, Argus Security Systems, Inc., Puente Fire Extinguisher, Inc., and Tarpon Fire & Safety.

§ 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Therefore, the board must release the requested information.

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).

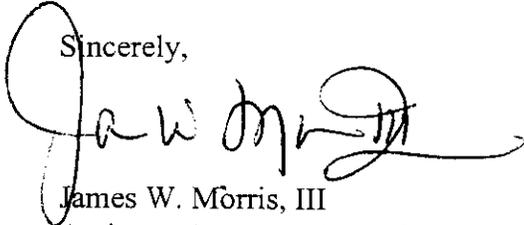
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



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

JWM/er

Ref: ID# 145789

Encl: Submitted documents

cc: Mr. Danny Huerta, Vice President  
First Line  
5820 N. Cage Blvd. #2  
Pharr, Texas 78577  
(w/o enclosures)

Allstate Fire Extinguisher  
P.O. Box 250  
Harlingen, Texas 78550  
(w/o enclosures)

Argus Security Systems, Inc.  
14 Ash  
McAllen, Texas 78501  
(w/o enclosures)

Mr. Antonio C. Puente  
Puente Fire Extinguisher, Inc.  
P.O. Box 593  
Brownsville, Texas 78522-0593  
(w/o enclosures)

Tarpon Fire & Safety  
P.O. Box 964  
San Benito, Texas 78576  
(w/o enclosures)