



June 26, 2001

Ms. Kelley B. Hill  
Law, Snakard & Gambill, P.C.  
801 Cherry Street  
3300 Burk Burnett Plaza  
Fort Worth, Texas 76102-3859

OR2001-2730

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148826.

The Tarrant County College District (the “district”), which you represent, received a request for a specified study and documentation received in response to an item in a subgrade stabilization document. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You advise this office that the requested information may involve the proprietary or property interests of Environmental Soil Stabilization, L.L.C. (“ESSL”) and Road and Material Stabilizers Int., Inc. (“Road and Material”).<sup>1</sup> You have submitted a copy of a letter notifying ESSL and Road and Material about the request as required by section 552.305(d).<sup>2</sup> Because you do not provide any written comments as to why the stated exceptions apply, we assume that you are relying on ESSL and Road and Material to provide arguments and do not claim

---

<sup>1</sup>You state that ESSL is the product distributor and that Road and Material is the product manufacturer for the product. Therefore, both companies have a proprietary interest in the same requested information.

<sup>2</sup>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 exceptions to the Public Information Act in certain circumstances).

any exceptions on behalf of the district. *See* Gov't Code § 552.305(c) (providing that governmental body may, but is not required to submit its reasons why proprietary information should be withheld).

Although Road and Material has not submitted arguments against disclosure of the submitted information, ESSL has submitted a brief in which it asserts that the same submitted information is excepted by sections 552.104 and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also reviewed the comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note that the purpose of section 552.104 is to protect the interests of a *governmental body* in situations such as competitive bidding and requests for proposals in which the governmental body may wish to withhold information to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information, such as bids and proposals, to governmental bodies. *Id.* at 8-9. Because ESSL has no standing to assert the protection of section 552.104, we do not address its arguments under that exception.

We also address ESSL's assertion that the submitted information is confidential. Information that is subject to disclosure under the Public Information Act (the "Act") may not be withheld simply because the party submitting it anticipates or requests confidentiality. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Further, it is well-settled that a governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific authority to keep the information confidential. *See* Open Records Decision Nos. 514 at 1 (1988), 476 at 1-2 (1987, 444 at 6 (1986). Consequently, under the Act, information must fall within an exception to disclosure in order to be withheld from disclosure.

Section 552.110(b) protects commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). ESSL explains that the requested information consists of technical studies and specifications for its product that stabilizes soil. Further, ESSL states that it contracted with Texas A&M University to conduct studies, funded totally by ESSL, verifying the effectiveness of the product in the lab and the field. ESSL states that it has spent three and one half years and \$160,000 commissioning the studies in order to develop specifications and maximize the field operation procedures. ESSL contends that its competitors would gain a considerable advantage at ESSL's expense if the documents were

released. Based on these representations, we conclude that ESSL has demonstrated the applicability of section 552.110(b) of the Government Code. *See* Open Records Decision No. 661 at 5-6 (1999). Accordingly, the district must withhold the submitted information.<sup>3</sup>

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.

---

<sup>3</sup>Having found the information excepted under section 552.110(b), we need not address trade secrets under section 552.110(a) of the Government Code.

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,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 148826

Enc: Submitted documents

c: Ms. Eileen R. Cummo  
Fielding, Parker, Jones & Posey, L.L.P.  
2700 Airport Freeway  
Fort Worth, Texas 76111-2332  
(w/o enclosures)

Mr. Thomas G. Gruenert  
Gibson & Gruenert, L.L.P.  
7707 Fannin, Suite 203  
Houston, Texas 77054  
(w/o enclosures)

Road and Material Stabilizers Int., Inc.  
4427 N.E. 158<sup>th</sup> Avenue  
Portland, Oregon 97230  
(w/o enclosures)