



November 19, 2001

Mr. Stephen C. Jacobs
Locke Liddell & Sapp, LLP
3400 Chase Tower
600 Travis Street
Houston, Texas 77002-3095

OR2001-5342

Dear Mr. Jacobs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154941.

The Houston Area Water Corporation (the "corporation"), which you represent, received a request to review and copy pertinent sections of the bids and correspondence pertaining to two specified companies relative to the NEWPP project. You claim that the requested information is excepted from disclosure pursuant to section 552.110 of the Government Code. You make no arguments with respect to the requested information. You state, and provide documentation showing, that you notified two third parties whose proprietary information may be implicated, Azurix North America ("Azurix") and U.S. Filter Operating Services, Inc. ("USFOS") of the request for information. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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). We have considered the claimed exception and have reviewed all submitted arguments.

We note at the outset that the corporation failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body that requests an attorney general decision concerning a request for information must, within a reasonable time but not later than the fifteenth business day after the date of

receiving the written request, submit to the attorney general a copy of the specific information requested or submit representative samples of the information if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). Although the corporation submitted a copy of the bid proposal that was submitted by the requestor to the corporation, the corporation failed to provide us with a copy of the specific information requested or representative samples of the specifically requested information, namely Azurix's and USFOS' bid proposals and any related correspondence.

When a governmental body fails to submit a copy of the specific information requested or representative samples of the specifically requested information, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is a demonstration that some other source of law makes the requested information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the corporation claims that the release of portions of the requested bid proposals may implicate Azurix's and USFOS' proprietary interests under section 552.110, we have no basis on which to conclude that the requested information is excepted from disclosure under the Public Information Act, since the corporation did not submit any portion of the requested information for our review. Accordingly, we conclude that the corporation must release all of the requested 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 154941

Enc. Submitted documents

cc: Mr. Glen Dunkelberger
Montgomery Watson Constructors, Inc.
5100 Westheimer, Suite 580
Houston, Texas 77056
(w/o enclosures)

Mr. Zia Querishi
U.S. Filter Operating Services
14950 Heathrow Forest Parkway, Suite 200
Houston, Texas 77032
(w/o enclosures)

Mr. Michael Wood
Azurix
333 Clay Street, Suite 1000
Houston, Texas 77002
(w/o enclosures)