



ATTORNEY GENERAL OF TEXAS  
G R E G A B B O T T

August 31, 2005

Ms. Ruth H. Soucy  
Manager and Legal Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2005-07994

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231386.

The Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to the following: (1) applications to the Texas Certified Capital Company (CAPCO) program; (2) a list of certified CAPCO participants; (3) how much money each CAPCO was allocated; and (4) insurers or other entities that are funding each CAPCO. You inform us that some of the requested information has been provided to the requestor. While you claim no exceptions to disclosure on behalf of the comptroller, you inform us, and provide documentation showing, that you notified ten interested third parties of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the public.<sup>1</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

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<sup>1</sup>The following third parties were notified pursuant to section 552.305: Accent Texas Fund I, L.P. ("Accent"); Advantage Capital Partners, Texas ACP I, L.P. ("ACP"); Aegis Texas Venture Fund, L.P. ("Aegis"); Enhanced Capital Texas Fund, L.P. ("Enhanced"); Lonestar CAPCO Fund, L.L.C. ("Lonestar"); Republic Holdings Texas, L.P. ("Republic"); Stonehenge Capital Company, L.L.C. ("Stonehenge"); Waveland NCP Texas Venture, L.P. ("Waveland"); Whitecap Texas Opportunity Fund ("Whitecap"); and Wilshire Texas Partners I, L.L.C. ("Wilshire").

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received and considered comments from Accent, ACP, Lonestar, Stonehenge, and Whitecap, and have reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-07464 (2005). The information in the current request is identical to the information previously requested and ruled upon by this office; therefore, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the comptroller must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter 2005-07464. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

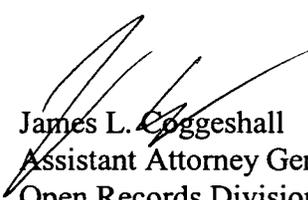
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 231386

Enc. Submitted documents

c: Ms. Stacey Higginbotham  
The Daily Deal  
2703 San Juan  
Austin, Texas 78733  
(w/o enclosures)

Ms. M'Lou Patton Bell  
Munsch Hardt Kopf & Harr PC  
600 Congress Avenue, Suite 2900  
Austin, Texas 78701-3057  
(w/o enclosures)

Mr. Scott Crist  
Aegis Texas Venture Fund, L.P.  
5090 Richmond Avenue # 319  
Houston, Texas 77056  
(w/o enclosures)

Mr. Michael A.G. Korengold  
Enhanced Capital Texas Fund, L.P.  
100 Crescent Court, Suite 700  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Ed Jerome  
Lonestar CAPCO Fund, L.L.C.  
1925 Beltline Road, Suite 208  
Carrollton, Texas 75006  
(w/o enclosures)

Mr. Joseph P. Regan  
Winstead Sechrest & Minick  
777 Main Street, Suite 1100  
Fort Worth, Texas 76102  
(w/o enclosures)

Mr. William B. Owens, Jr.  
Stonehenge Capital Company, L.L.C.  
450 Laurel Street, Suite 1450  
Baton Rouge, Louisiana 70801  
(w/o enclosures)

Mr. Michael T. Johnson  
Advantage Capital Partners  
909 Poydras Street, Suite 2230  
New Orleans, Louisiana 70112  
(w/o enclosures)

Mr. Roger Hauptman  
Waveland NCP Texas Venture, L.P.  
823 Congress, Suite 808  
Austin, Texas 78705  
(w/o enclosures)

Mr. Peter Huff  
Whitecap Texas Opportunity Fund  
3902 Laguna Vista Cove  
Austin, Texas 78746  
(w/o enclosures)

Mr. Brian Wasserman  
Wilshire Texas Partners I, L.L.C.  
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Houston, Texas 77042  
(w/o enclosures)