



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 27, 2006

Mr. Erik A. Eriksson  
General Counsel  
Port of Houston Authority  
P. O. Box 2562  
Houston, Texas 77252-2562

OR2006-02978

Dear Mr. Eriksson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 244815.

The Port of Houston Authority (the "authority") received a request for information submitted in response to the RFP to Perform Professional Services for Public Relations. Although you state that the requested information may be excepted from disclosure under sections 552.101, 552.104, 552.110, 552.113, 552.131, and 552.133 of the Government Code, you make no arguments regarding these exceptions. However, you claim that the requested information may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, the authority notified the interested third party, Anteon Corporation ("Anteon"), of the authority's receipt of the request and of its right to submit arguments to us as to why any portion of the submitted information should not be released. *See Gov't Code §552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note that the authority has only submitted information from one company to our office for review. Therefore, we assume any other responsive information has been released to the extent it exists. *See Gov't Code §§ 552.301, .302.*

An interested third-party is allowed ten 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Anteon has not submitted any comments to this office explaining how release of the information at issue would affect its proprietary interests. Therefore, Anteon has not provided us with a basis to conclude that it has a protected proprietary interest in any of the submitted information. *See Id.* § 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. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the authority may not withhold any portion of the submitted information on the basis of any proprietary interest that Anteon may have in the information. The submitted information must be released.

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 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); *Texas 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 Office of the Attorney General 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/krl

Ref: ID# 244815

Enc. Submitted documents

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