



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2007

Mr. Thomas Bailey
Legal Services
VIA Metropolitan Transit
P. O. Box 12489
San Antonio, Texas 78212

OR2007-00488

Dear Mr. Bailey:

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#268900.

VIA Metropolitan Transit ("VIA") received a request for specified VIA trustee meeting minutes and documents pertaining to automated public toilets. You state that some of the responsive information will be released to the requestor. However, you claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code.¹ You further inform us that the submitted information, which pertains to CEMUSA San Antonio, Ltd., ("CEMUSA"), may implicate the company's proprietary interests. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, you notified CEMUSA of the request for information and of its right to submit arguments explaining why the information concerning the company 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 and considered the submitted arguments.

¹Although you also raise section 552.101 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we presume you no longer assert this exception to disclosure. Gov't Code § 552.301, .302.

Initially, we address VIA's claim regarding section 552.110 of the Government Code on behalf of VIA. By its terms, section 552.110 of the Government Code only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. Accordingly, VIA may not withhold the submitted information under section 552.110 of the Government Code, on its own behalf.

Next, CEMUSA asserts that the submitted information may not be disclosed because CEMUSA "made the disclosure [to VIA] contingent upon such financial documentation remaining confidential." However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."); 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

CEMUSA seek to withhold the submitted information under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial 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." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered CEMUSA's arguments and reviewed the submitted information, we find that CEMUSA has not established by specific factual evidence that any of the submitted information is excepted from disclosure as commercial or financial information the release of which would cause CEMUSA substantial competitive harm under section 552.110(b) of the Government Code. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982)

(information relating to organization and personnel, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, none of the information may be withheld under section 552.110 of the Government Code. As neither VIA nor CEMUSA raise any further exceptions to disclosure, 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,

A handwritten signature in black ink, appearing to read "Holly R. Davis", written in a cursive style.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 268900

Enc. Submitted documents

c: Mr. Roddy Stinson
San Antonio Express-News
P. O. Box 2171
San Antonio, Texas 78297-2171
(w/o enclosures)

Mr. Paul M. Juarez
Brown, P.C.
112 E. Pecan Street, Suite 1490
San Antonio, Texas 78205
(w/o enclosures)