



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2007

Mr. James G. Nolan  
Assistant General Counsel  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2007-11225

Dear Mr. Nolan:

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#287741.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for "annual reports for 2005 and 2006 submitted by state-certified CAPCO companies to the comptroller's office." You claim that the submitted information is excepted from disclosure under sections 552.137 and 552.143 of the Government Code. You also believe that the submitted information may contain proprietary information subject to exception under the Act. You state, and provide documentation showing, that you notified the interested third parties of the comptroller's receipt of the request for information and of each company's right to submit arguments to this office as to why the requested information should not be released to the requestor.<sup>1</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

We note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld

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<sup>1</sup>The interested third parties are Accent Texas Fund I, L.P., Aegis Texas Venture Fund, L.P., Enhanced Capital Texas Fund, L.P., Lonestar CAPCO Fund, L.L.C., Republic Holdings Texas, L.P., Stonehenge Capital Fund Texas, L.P., TX ACPI, L.P., Wwaveland NCP Texas Ventures, L.P., Whitecap Texas Opportunity Fund, L.P., and Wilshire Texas Partners I, L.L.C.

from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, no interested third party has submitted to this office any reasons explaining why the requested information should not be released. Therefore, these companies have failed to provide us with any basis to conclude that they have a protected proprietary interest in any of the submitted information, and none of the information may be withheld on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Because the comptroller's arguments under section 552.143 of the Government Code are potentially the most broad, we will address them first. Section 552.143(a) provides that "[a]ll information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021." *Id.* § 552.143(a). Section 552.143(d)(1) defines a private investment fund as "an entity, other than a governmental body, that issues restricted securities to a governmental body to evidence the investment of public funds for the purpose of reinvestment." *Id.* § 552.143(d)(1). Upon review of your arguments and explanation of the CAPCO program, we determine that the submitted information was not prepared or provided to the comptroller by a private investment fund as defined by section 552.143(d)(1). Accordingly, no portion of the submitted information may be withheld under section 552.143 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The representative sample of e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the comptroller must withhold the marked e-mail addresses in accordance with section 552.137 unless the comptroller receives consent for their release. As you raise *no further exceptions to disclosure, the remaining 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).

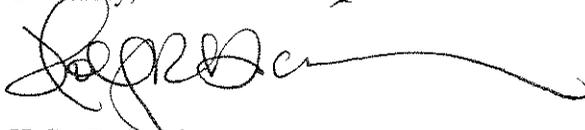
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/ceg

Ref: ID# 287741

Enc. Submitted documents

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Mr. Scott Crist, CEO  
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