



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2007

Ms. Lesli R. Barber  
Staff Attorney - Administrative Law Section  
Legal Services Division  
Texas General Land Office  
1700 Congress Avenue, Suite 910  
Austin, Texas 78701

OR2007-16595

Dear Ms. Barber:

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# 297634.

The Texas General Land Office (the "GLO") received a request for the SOQ's of the winning bidders and all scoring sheets for request number 80161-DF. You state you have provided the scoring sheets to the requestor. Although you take no position with respect to the remaining information, you claim that the information may contain proprietary information subject to exception under the Act. Accordingly, you state that you notified Carter & Burgess, Inc. ("Carter"), Earth Tech, Inc. ("Earth Tech"), MACTEC, TCB, Inc. ("TCB"), and Terracon Consultants ("Terracon") of the GLO's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. *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).* You state Carter and MACTEC agreed to the release of their respective information; therefore, you state you will provide this information to the requestor. We have received comments from Terracon. We have considered the submitted arguments and reviewed the submitted information.

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 it should be withheld from disclosure. *See Gov't Code §552.305(d)(2)(B).* As of the date of this letter, Earth Tech and TCB have not submitted to this office any reasons explaining why the information responsive to the request should not be released. Thus, we have no basis for concluding that any portion of the submitted

information constitutes proprietary information of either of these companies, and the GLO may not withhold any portion of the submitted information 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.

Terracon asserts that some of its information is excepted under section 552.110 of the Government Code. Section 552.110(b) of the Government Code protects “[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); ORD 661.

Terracon states that release of some of its financial information would create substantial competitive harm to Terracon because the requestor is a direct competitor of Terracon and the financial information at issue would give the requestor key insight into Terracon’s financial status and performance. After reviewing the information at issue and the submitted arguments, we conclude that Terracon has established that the release of some of the information at issue would cause the company substantial competitive injury; therefore, the GLO must withhold this information, which we have marked, under section 552.110(b).

We note that Earth Tech’s information includes insurance policy numbers. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Therefore, the GLO must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the GLO must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

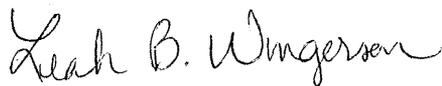
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 297634

Enc. Submitted documents

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