



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 30, 2009

Ms. Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR2009-15462

Dear Ms. Hibbs:

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# 359909 (TDA-PIR-09-571).

The Texas Department of Agriculture (the "department") received a request for proposals submitted in response to a specified request for proposals. You indicate that the department has released or will release some of the requested information. Although you take no position as to whether the submitted information must be released to the requestor, you assert that release of this information may implicate the proprietary interests of third parties. Accordingly, you provide documentation showing that the department notified BroadMap L3C; Longway Broadband Service; RuMBA, USA, Inc.; and TSTCI Foundation, Inc. (collectively the "third parties") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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 reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of a 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of

the third parties have submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of any of the third parties. Consequently, none of the submitted information may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

However, we note that some of the information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). As no arguments against disclosure have been raised, the department must release the information at issue to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 359909

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Daniel Perrone  
BroadMap L3C  
3900 Westerre Parkway, Suite 300  
Richmond, Virginia 23233  
(w/o enclosures)

Mr. Joseph Longway  
Longway Broadband Service  
2704 Meadow Park  
Mount Juliet, Tennessee 37122  
(w/o enclosures)

Ms. Luisa Handem  
RuMBA USA Inc  
45 Triburon Drive  
Austin, Texas 78738  
(w/o enclosures)

Ms. Cammie Hughes  
TSTCI Foundation, Inc.  
5929 Balcones Drive, Suite 200  
Austin, Texas 78731  
(w/o enclosures)