



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2014

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2014-04815

Dear Ms. Alexander:

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# 517575.

The Texas Department of Transportation (the "department") received a request for the score sheets and proposals for Sugar Land Regional Airport Wildlife Assessment Proposal AVN-551. You state the department is releasing the requested score sheets. You state, although the department takes no position with respect to the submitted information, its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the department notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by SWCA.

Initially, 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 from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has

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<sup>1</sup>The third parties notified pursuant to section 552.305 are the following: Adams Environmental, Inc.; Advantage Consulting LLC; Environmental Resource Solutions, Inc.; Geo-Marine, Inc.; KBA EnviroScience, Ltd.; Kleinfelder, Inc.; Loomacres Wildlife Management, Inc.; Mead & Hunt, Inc.; S&B Infrastructure, Ltd.; and SWCA Environmental Consultants ("SWCA").

received comments from only SWCA explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *See id.* § 552.110; 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.

Section 552.110(b) 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[.]”<sup>2</sup> 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.*; ORD 661 at 5-6.

SWCA contends its information is commercial or financial information, the release of which would cause substantial competitive harm to SWCA. Upon review, we conclude SWCA has established the release of its references would cause it substantial competitive injury. Accordingly, to the extent the references we have marked are not publicly available on SWCA’s website, the department must withhold the information at issue under section 552.110(b). However, we find SWCA has not made the specific factual or evidentiary showing required by section 552.110(b) that release of its remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude the department may not withhold the remaining information under section 552.110(b).

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, to the extent SWCA’s references we have marked are not publicly available on SWCA’s website, the department must withhold the information we have marked under

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<sup>2</sup>Although SWCA does not specifically cite to section 552.110(b) of the Government Code, we understand it to raise this exception based on its arguments.

section 552.110(b) of the Government Code. The department must release the remaining information; however, any information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 517575

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Kim Allerton  
Environmental  
Resource Solutions, Inc.  
Suite 1  
8711 Perimeter Park Boulevard  
Jacksonville, Florida 32216  
(w/o enclosures)

Ms. Kensley Greuter  
Certified Wildlife Biologist  
Project Manager  
Austin Natural Resources  
SWCA Environmental Consultants  
Building 1, Suite 110  
4407 Monterey Oaks Boulevard  
Austin, Texas 78749  
(w/o enclosures)

Ms. Suzanne Bates  
Geo-Marine, Inc.  
2201 K Avenue, Suite A2  
Plano, Texas 75074  
(w/o enclosures)

Mr. Gregory Scot Gordon, PE  
Kleinfelder, Inc.  
Suite 450  
1200 Aerospace Avenue  
Houston, Texas 77034  
(w/o enclosures)

Mr. William Ballard  
Mead & Hunt, Inc.  
Suite 108  
8217 Shoal Creek Boulevard  
Austin, Texas 78757  
(w/o enclosures)

Mr. Gary Exner  
Advantage Consulting LLC  
410 Lake Lenelle Drive  
Chuluota, Florida 32766  
(w/o enclosures)

Mr. C. Keith Bradley  
KBA EnviroScience, Ltd.  
101 East Southwest Parkway, Suite 114  
Lewisville, Texas 75067  
(w/o enclosures)

Ms. Kristin Baciaska  
Loomacres Wildlife Management, Inc.  
P.O. Box 361  
Warnerville, New York 12187  
(w/o enclosures)

Mr. Daniel O. Rios, PE  
S&B Infrastructure, Ltd.  
5408 North 10<sup>th</sup> Street  
McAllen, Texas 78504  
(w/o enclosures)

Ms. Sable Kitchen  
Adams Environmental, Inc.  
12000 Crownpoint Drive, Suite 120  
San Antonio, Texas 78233  
(w/o enclosures)