



November 13, 2001

Ms. Juliet U. King
Acting General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2001-5257

Dear Ms. King:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154796.

The General Services Commission received a request for "information relating to the new Department of Public Safety Houston Regional Headquarters building under construction." You advise us that you have released most of the requested information, but you further advise us that the requested information may include the proprietary financial information of several third parties, including Mission Bufete Constructors, Inc., Pyramid Constructors, Inc., DiCarlo Construction Company South, Spaw Glass Construction Corporation, Williams Industries, Inc., The Westfall Group, Constructors & Associates, Inc., Dixon Services, Inc., Braselton Construction Co. ("Braselton"), Drymalla Construction Company, Inc., and Stewart-Matl Ltd. Co. You have submitted to this office a copy of the letters notifying these third parties of the request for information as required by section 552.305(d) of the Government Code. *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 that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

We first note that, as of the date of this letter, Braselton is the only third party to respond to your letter sent pursuant to section 552.305. Because the other third parties did not respond to your letters and you have no opinion on the matter, we have no basis to conclude that the financial information of those third parties is excepted from disclosure under section 552.110 of the Government Code. *See Gov't Code § 552.110(b)* (to prevent disclosure of commercial

or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, you may not withhold the financial information of Mission Bufete Constructors, Inc., Pyramid Constructors, Inc., DiCarlo Construction Company South, Spaw Glass Construction Corporation, Williams Industries, Inc., The Westfall Group, Constructors & Associates, Inc., Dixon Services, Inc., Drymalla Construction Company, Inc., and Stewart-Matl Ltd. Co. under section 552.110.

We now address the arguments submitted by Braselton. Section 552.110 of the Government Code protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial 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. Braselton contends that portions of the requested information fall under the second prong of section 552.110. This prong of section 552.110 requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that disclosure of the information "would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999).

Braselton contends that its financial statements are excepted from disclosure under section 552.110 because their release would place it at a competitive disadvantage in that competitors would then be able to calculate Braselton's bonding capacity and, therefore, its ability to bid on projects. Based on Braselton's arguments and our review of the information, we agree that the information relating to Braselton's financial statements is excepted from disclosure under section 552.110(b). Thus, you must withhold Braselton's financial information. We have marked the information that is excepted under section 552.110(b) and must be withheld.¹

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

¹ Because section 552.110 is dispositive, we do not address Braselton's claims under section 552.101 of the Government Code.

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).

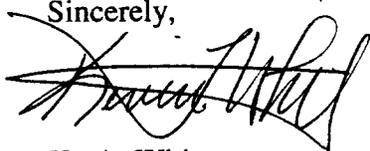
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 Texas Building and Procurement Commission 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,



Kevin White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 154796

Enc. Marked documents

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