ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2004

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2004-3179

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199828.

The Texas Department of Insurance (the "department") received two requests for information related to the Highlands Insurance Company contract. The first requestor seeks a copy of the bid documents and "HSP plan of the SDR" awarded the contract. The second requestor seeks copies of all bid proposals, other than the requestor's, submitted in response to this particular request for proposals. You take no position and make no arguments regarding the submitted information, but have notified the third parties whose proprietary interests may be implicated by the requests of these requests and of their opportunity to submit comments to this office in accordance with section 552.305 of the Government Code.[1] *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

An interested third party is allowed 10 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the notified third parties has submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that the release of any portion of the submitted

[1]The third parties you have notified are: Jack M. Webb & Associates, Inc.; Hammerman & Gainer, Inc.; Colonial Casualty Insurance; Hubbard & Biederman, L.L.P.; The Park at Eanes Creek; and Conine Realty Advisors, Inc.

information would implicate the proprietary interests of any third party and none of it may be withheld on that basis. *See, e.g.*, Gov't Code § 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 (1990). Accordingly, the requested 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, 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 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 199828

Enc. Submitted documents

c: Mr. Bob Loiseau
Jack M. Webb & Associates, Inc.
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Austin, Texas 78738
(w/o enclosures)

Mr. Rich McClain
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Mr. Arnold Reyes
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