



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2004

Ms. Hadassah Schloss  
Open Records Administrator  
Texas Building and Procurement Commission  
P.O. Box 13047  
Austin, Texas 78711

OR2004-5529

Dear Ms. Schloss:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204697.

The Texas Building and Procurement Commission (the "commission") received a request for all of the responses to a particular Request for Proposals. You state that in accordance with a previous determination issued by this office, the commission has released all but one of the responsive proposals. *See* Open Records Letter No. 2004-1867 (2004) (stating that the commission must withhold Kustom Signal's trade secret information under section 552.110(a) of the Government Code and the remaining proposals must be released in accordance with copyright law); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). You state, however, that the release of MPH Industries' ("MPH") proposal may implicate the proprietary interests of that company. Pursuant to section 552.305 of the Government Code, the commission notified MPH of the request for information and of its opportunity to submit arguments to this office. *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 of the Government Code permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, MPH has not submitted any comments to this office explaining how release of its

information would implicate its proprietary interests. Therefore, MPH has provided us with no basis to conclude that it has a protected proprietary interest in its information. *See* 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, MPH's information cannot be withheld under section 552.110 of the Government Code.

We note, however, that some of the information contained in MPH's proposal is confidential. MPH's proposal contains policy numbers that are excepted under section 552.136 of the Government Code. Section 552.136 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." Therefore, the commission must withhold the policy numbers we have marked under section 552.136 of the Government Code.

We further note that some of the documents contained in Tab 5 may be protected by 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. 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). Thus, except for the information in Tab 5 that is excepted from disclosure under section 552.136, you must release the copyrighted documents in Tab 5 in accordance with applicable copyright laws.

In summary, you must withhold the information we have marked under section 552.136. Except for the marked 552.136 information in Tab 5, you must release the copyrighted documents in Tab 5 in accordance with applicable copyright laws. All other 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,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Ref: ID# 204697

Enc. Submitted documents

c: Mr. Kevin Sullivan  
27921 Sheffield  
Mission Viejo, California 92692  
(w/o enclosures)

Ms. Sherry Duff  
Executive Secretary  
MPH Industries, Inc.  
316 East Ninth Street  
Owensboro, Kentucky 42303  
(w/o enclosures)