ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2004

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport Board
P. O. Box 619428
Dallas, Texas 75261-9428

OR2004-10501

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214923.

The Dallas/Fort Worth International Airport Board (the "board") received a request for a specified "bid tabulation." The requestor also seeks the "total dollars billed against the existing Laboratory Services Contract for each of the past two fiscal years." You state that the board is in the process of providing the requestor with some of the requested information. You indicate that some of the requested information does not exist.[1] Although the board defers to the interested third parties who may have a proprietary interest in the remaining requested information to raise arguments for withholding that information, you state that such information may be subject to third party confidentiality claims under sections 552.101 and 552.110 of the Government Code. Pursuant to section 552.305(d), the board notified the interested third parties, LNS Environmental Services, Inc. ("LNS"), TTI Environmental Laboratories ("TTI"), and Certes Environmental Laboratories, L.L.C. ("Certes") of the

[1] We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Econ. Opp. Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

board's receipt of the request and of each company's right to submit arguments to us as to why any portion of the remaining requested information should not be released. *See* Gov't Code §552.305(d); *see also* 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 under Act in certain circumstances). We have considered arguments submitted to us by TTI and have reviewed the submitted information.

Initially, we note that the board did not submit any responsive information to us pertaining to Certes. We, therefore, presume that the board has already provided the requestor with this information to the extent that it existed on the date of the board's receipt of this request. If not, then the board must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that 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, LNS has not submitted comments to us explaining why any portion of the submitted information relating to LNS should not be released. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate LNS' proprietary interests. *See, e.g.,* Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 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). Accordingly, we conclude that the board may not withhold any portion of LNS's information on the basis of any proprietary interest that it may have in the information. Consequently, the board must release the submitted information pertaining to LNS to the requestor.

We now address the arguments submitted to us by TTI. TTI claims that portions of the submitted information are excepted from disclosure pursuant to section 552.104 of the Government Code. We note, however, that section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No.592 at 8-9 (1991). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). We note that the board has not argued that the release of any portion of the submitted information would harm its interests in a particular competitive situation under section 552.104. Accordingly, we conclude that the board may not withhold any portion of the submitted information under

section 552.104 of the Government Code. Consequently, the board must release the submitted information pertaining to TTI to the requestor.

In summary, the board must release the entirety of the submitted information to the requestor.

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).

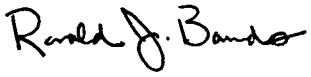
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



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RJB/krl

Ref: ID# 214923

Enc. Submitted documents

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