



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2006

Mr. Clay Collins  
Deputy Executive Director and Public Information Officer  
Capital Area Council of Governments  
2512 IH 35 South, Suite 200  
Austin, Texas 78704

OR2006-04264

Dear Mr. Collins:

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# 247517.

The Capital Area Council of Governments (the "CAPCOG") received a request for copies of the following documents related to the Two Continuous Ozone Monitoring Stations project awarded by CAPCOG on or around March 22, 2004: 1) the winning proposal for the project, and 2) the subsequent contract between the winning supplier and CAPCOG. You claim that portions of the submitted information may be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, but take no position as to whether this information is excepted under these exceptions. However, pursuant to section 552.305 of the Government Code, you notified Air Quality Solutions, Inc. ("AQSI"), an interested third party, of the request and of their opportunity to submit comments 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 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). The CAPCOG has submitted the requested information for our review. We have reviewed the submitted information.

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 information relating to that party should be withheld from public disclosure. *See Gov't Code § 552.305(d)(2)(B)*. Although AQSI generally argues that the submitted information should

be withheld, as of the date of this decision, AQSI has not submitted to this office any reasons explaining why its information should not be released. Therefore, the interested third party has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. *See, e.g.*, 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). Accordingly, we conclude that the CAPCOG may not withhold any portion of the submitted information on the basis of any proprietary interest AQSI may have in the information. Therefore, the submitted information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/eb

Ref: ID# 247517

Enc. Submitted documents

c: Onvia  
Attn: FOIA Request Coordinator  
1260 Mercer Street  
Seattle, Washington 98109  
(w/o enclosures)

Mr. Rogelio Ramon  
Air Quality Solutions, Inc.  
1301 South IH 35, Suite 107  
Austin, Texas 78741  
(w/o enclosures)