



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2006

Mr. Thomas Bailey  
Legal Services  
VIA Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2006-04284

Dear Mr. Bailey:

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# 247440.

The VIA Metropolitan Transit ("VIA") received a request for a copy of the winning proposal and subsequent contract resulting from VIA's Request for Proposals to provide Drug and Alcohol Testing services. You claim that portions of the requested information are excepted from disclosure under section 552.110 of the Government Code.<sup>1</sup> You also claim that the release of some of the requested information may implicate the privacy or proprietary rights of an interested third party, Concentra Medical Centers ("Concentra"). Accordingly, you indicate that you notified Concentra of the request for information pursuant to section 552.305 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); *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 in Act in certain circumstances). We reviewed all of the submitted information and considered the exceptions you raise.

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<sup>1</sup>We note you also raise section 552.101 but makes no argument in support of this exception. We assume that you no longer claim section 552.101. *See* Gov't Code §§ 552.301(e)(1)(A), .302; Open Records Decision No. 665 at 2 n.5 (2000).

Initially, we note 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 Concentra has submitted the requested documents for our review, as of the date of this letter, it has not submitted to this office reasons explaining why VIA should not release their information. Therefore, Concentra has provided us with no basis to conclude that it has a protected interest in any of the submitted information and the information may not be withheld on that basis.

We now turn to your claim regarding section 552.110 of the Government Code on behalf of VIA and on behalf of Concentra. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. However, a governmental body may assert section 552.110 on behalf of an interested third party. Therefore, we will address your claim on behalf of Concentra.

Section 552.110(b) protects "[c]ommercial 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[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Upon review of your arguments on behalf of Concentra, we find that you have only provided conclusory assertions that release of the requested information would harm the competitive interests of Concentra, and have not provided specific factual evidence to substantiate the claim that release of the information you seek to withhold under section 552.110 would result in competitive harm to Concentra. Accordingly, we determine that the requested information may not be withheld under section 552.110(b) on the basis of VIA's arguments. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

Finally, we note that some of the submitted information may be protected by copyright. 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).

In summary, VIA may not withhold any information under section 552.110 of the Government Code. As you raise no other exceptions, the submitted information must be released to the requestor; however, in releasing information that is protected by copyright, VIA must comply with applicable copyright law.

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,



James Forrest  
Assistant Attorney General  
Open Records Division

JF/sdk

Ref: ID# 247440

Enc. Submitted documents

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