



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2007

Ms. Mary D. Marquez
Legal/Records Manager
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2007-09850

Dear Ms. Marquez:

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# 285586.

The Capital Metropolitan Transportation Authority (the "authority") received a request for four categories of information pertaining to RFQ #110842, Public Relations Professional Services. You state that you will release some of the responsive information. You claim that some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. You also indicate that release of the submitted information may implicate the proprietary interests of Boone-DeLeon Communications ("Boone-DeLeon"), KD Enterprises ("KD"), Martin & Salinas Public Affairs ("Martin & Salinas"), and S & C Advertising & Public Relations ("S & C"). Accordingly, you inform us, and provide documentation showing, that you notified Boone-DeLeon, KD, Martin & Salinas, and S & C of the request and of their right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.305(d)* (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 to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

We note that 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)*. As of the date of this letter, we have not received any arguments from Boone-DeLeon, KD, Martin & Salinas, or S & C for withholding any of the submitted information. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of these parties. *See id.*

§ 551.110(b); Open Records Decision Nos. 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), 552 at 5 (1990) (party must establish prima facie case that information is trade secret). Accordingly, we conclude that the authority may not withhold any portion of the submitted information on the basis of any proprietary interest that Boone-DeLeon, KD, Martin & Salinas, or S & C may have in it.

Next, you claim that section 552.136 of the Government Code may except some of the submitted information from disclosure. Section 552.136 provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Gov’t Code § 552.136. Upon review, we find that none of the submitted information may be withheld under section 552.136 of the Government Code.

We note that the submitted information contains e-mail addresses that are subject to section 552.137 of the Government Code.¹ This section excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We find that the e-mail addresses at issue are not of the type specifically excluded by section 552.137(c). Therefore, unless the individuals at issue consented to the release of their e-mail addresses, the authority must withhold the e-mail addresses we have marked in accordance with section 552.137 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception like section 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, the e-mail addresses we have marked must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released to the requestor; however, in releasing information that is protected by copyright, the authority 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/jb

Ref: ID# 285586

Enc. Submitted documents

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