



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2007

Mr. Clay Collins
Capital Area Council of Governments
P. O. Box 17848
Austin, Texas 78760

OR2007-14263

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 #293358.

The Capital Area Council of Governments ("CAPCOG") received a request for bid proposals and scoring results for the Ozone Monitoring Contract for the 2006 and 2007 seasons. You indicate that you have released the requested scoring sheets. CAPCOG raises no exception to disclosure of the submitted information on its own behalf. However, you indicate that the submitted information may be subject to third party proprietary interests, and thus, pursuant to section 552.305 of the Government Code, you have notified Air Quality Solutions, Inc. ("AQSI") and URS Corporation ("URS") of the request and of the companies' right to submit arguments to this office as to why the 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 in certain circumstances). You state and provide documentation showing that URS does not object to the release of its bid proposal, and that you have released this proposal to the requestor. We have reviewed arguments submitted by AQSI and the information at issue.

Section 552.110(b) excepts from disclosure “[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered AQSI’s arguments and reviewed the information at issue, we agree that the company’s customer list, which we have marked, is excepted from disclosure under section 552.110(b). AQSI also argues that release of its pricing information, technical approach, and staff information will allow the requestor’s company, which is AQSI’s competitor, to directly lower its own future price below that of AQSI. However, we find that AQSI has made only conclusory allegations that release of the remaining information at issue would cause its company substantial competitive injury. Furthermore, this type of information is generally not subject to section 552.110. *See* Open Records Decision No. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Finally, we understand that in this instance, AQSI was the winning bidder. We note that the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Thus, except for the customer list that we marked, none of the information at issue may be withheld pursuant to section 552.110(b). As AQSI raises no further exceptions against the disclosure of its information, it 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, 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,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 293358

Enc. Submitted documents

c: Mr. Julius Holmes
Holmes and Holmes Contracting
3320 Pecan Shadow Way
Mesquite, Texas 75181
(w/o enclosures)

Mr. Rogelio "Roger" C. Ramon, M.S.E.
President/Owner
Air Quality Solutions, Inc.
1301 South IH-35, Suite 107
Austin, Texas 78741
(w/o enclosures)

Mr. Albert Hendler
URS Corporation
c/o Mr. Clay Collins
Capital Area Council of Governments
P. O. Box 17848
Austin, Texas 78760
(w/o enclosures)