



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-00135

Dear Ms. Eales:

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# 404928 (GC No. 17836).

The City of Houston (the "city") received a request for water, soil, and air tests performed at two specified locations during each of the adjacent utility installations to the Metro line. You claim the requested information may be excepted from disclosure under sections 552.101, 552.110, and 552.131 of the Government Code, but take no position on the applicability of these exceptions. However, you indicate that release of the information at issue may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, that you notified Metropolitan Transit Authority of Harris County ("Metro") of the request and of their right to submit arguments to this office as to why its information 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note 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 id.* § 552.305(d)(2)(B). As of the date of this letter, Metro has not submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Because we have not received

comments from Metro, we have no basis to conclude that the release of any portion of the submitted information would implicate their proprietary interests. Accordingly, none of the information may be withheld on that basis. *See id.* § 552.110; 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). As no exceptions to disclosure have been raised, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 404928

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Margaret O'Brien
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429
(w/o enclosures)