



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2011

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2011-10302

Dear Ms. Alexander:

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# 424969.

The Texas Department of Transportation (the "department") received two requests from different requestors for responses to a specified request for information for an asset management decision support system. The department takes no position on whether the submitted information is excepted from disclosure but states that release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified the interested third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ 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 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

¹The notified third parties are: Decision Lens; Deighton Associates Limited; AgileAssets Inc.; Data Transfer Solutions, LLC; PMWeb Corporate; Cambridge Systematics, Inc.; Riva Modeling Systems Inc.; and Sirius Computer Solutions.

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, this office has not received comments from the third parties explaining why their submitted information should not be released. Therefore, we have no basis to conclude that the third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the department may not withhold any portion of the submitted information based upon the proprietary interests of the third parties.

We note 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. As no exceptions to disclosure are raised, the submitted information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 424969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Decision Lens
4250 North Fairfax Drive, Suite 1410
Arlington, Virginia 22203
(w/o enclosures)

Deighton Associates
11 Stanley Court, Unit 1
Whitby, Ontario Canada L1N 8P9
(w/o enclosures)

Data Transfer Solutions, LLC
3680 Avalon Park Boulevard East
Orlando, Florida 32828
(w/o enclosures)

PMWeb Corporate
400 Trade Center 128, Suite 3990
Woburn, Massachusetts 01801
(w/o enclosures)

Cambridge Systematics
555 12th Street, Suite 1600
Oakland, California 94607
(w/o enclosures)

Riva Modeling Systems Inc.
RB2-530 Richmond Street West
Toronto, Ontario Canada MSV 1Y4
(w/o enclosures)

Sirius Computer Solutions
13463 Athens Trail
Austin, Texas 78729
(w/o enclosures)