



May 5, 2000

Ms. Mary Elder
Executive Director
Interagency Council on Early
Childhood Intervention
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR2000-1748

Dear Ms. Elder:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134843.

The Texas Interagency Council on Early Childhood Intervention (the "council") received a request for copies of the evaluation and decision criteria and the competitive bid responses related to RFP number 532000127. You state that you have released the evaluation and decision criteria to the requestor. You assert that the proprietary interests of the four companies who submitted bid proposals may be implicated by the release of the responsive information.¹ You claim that the information may be excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information.

¹You have submitted proposals from four companies. Those companies are Abdeladim & Associates, GartnerGroup, TKI Consulting/Hall Kinion and Environmental Etc., Inc.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption of openness may also be overcome if an exception designed to protect the interest of a third party is applicable. Open Records Decision No. 150 (1977). The exception from public disclosure in question here, section 552.110, is such an exception. Open Records Decision No. 319 (1982).

Section 552.305(d) requires the council to notify the companies of the request for an attorney general decision. Notice under subsection 552.305(d) must be in writing and sent within a reasonable time not later than the 10th business day after receipt of the request for information and include:

- (A) a copy of the written request for the information, if any, received by the governmental body; and
- (B) a statement, *in the form prescribed by the attorney general*, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

- (i) each reason the person has as to why the information should be withheld; and
 - (ii) a letter, memorandum, or brief in support of that reason.

(emphasis added). You state that you have notified the companies about this request.² *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

²We note that the notice sent to the third parties was not in the form prescribed by the attorney general, as required by section 552.305(d). The prescribed form may be found on our website at <http://www.oag.state.tx.us>.

Section 552.110 protects: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.³ *Id.* This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990).

The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 at 5-6 (1999).

In the instant case, only one of the four companies, Environmental Etc., Inc., has submitted to this office a letter arguing against the release of the requested information. However, in its letter, Environmental Etc., Inc. neither claims a specific exception under the Public Information Act nor states whether it believes the information at issue is a trade secret or protected commercial or financial information; it merely alleges that disclosure of the bid proposal would be "extremely unfair." Therefore, based upon our review of the documents and the arguments presented by Environmental Etc., Inc., we conclude that the submitted information does not constitute a trade secret or protected commercial or financial information excepted from disclosure under section 552.110. You must release the responsive information relating to Environmental Etc., Inc.

Additionally, because the other three companies did not submit arguments to this office, we have no basis to conclude that their submitted information is excepted from disclosure. *See*

³The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party *must* show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, the council must also release the requested information relating to Abdeladim & Associates, GartnerGroup and TKI Consulting/Hall Kinion to the requestor.

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.

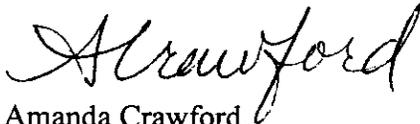
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 134843

Encl. Submitted documents

cc: Mr. Andrew Hargett
Sprint Paranet Austin
9430 Research Boulevard
Building 4, Suite 450
Austin, Texas 78759
(w/o enclosures)

Mr. Alexander W. Porter
General Counsel
Interagency Council on Early
Childhood Intervention
4900 North Lamar Boulevard
Austin, Texas 78751-2399

Ms. Elizabeth Drake
Environmental Etc., Inc.
1301 Regents park Drive, Suite 200
Houston, Texas 77058
(w/o enclosures)

Ms. Rita Abdeladim
Abdeladim & Associates
17918 Holderness Lane
Pflugerville, Texas 78660
(w/o enclosures)

Ms. Christine Wilson
GartnerGroup, Inc.
5950 Canoga Avenue, Suite 600
Woodland Hills, California 91367
(w/o enclosures)

Ms. Ruth A. Mora
TKI Consulting/Hall Kinion
8911 Capitol of Texas Highway, Suite 3310
Austin, Texas 78759
(w/o enclosures)