



August 1, 2000

Ms. Ann Dillon
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2000-2896

Dear Ms. Dillon:

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# 137607.

The General Services Commission (the "commission") received a request for the proposals that were submitted by eight prospective vendors in connection with a specified Request for Offer. You inform us that you released three of the responsive proposals to the requestor in accordance with Open Records Letter No. 2000-1931 (2000) and that you also released the proposal of the awarded vendor pursuant to its signed letter of release. You further inform us that a fifth proposal is the subject of a separate request for a decision under the Public Information Act. You state that two other proposals, submitted by EpicEdge and IBM, were designated as being confidential and/or proprietary by those two vendors. You have submitted copies of those two proposals to this office. Pursuant to section 552.305 of the Government Code, the commission notified EpicEdge and IBM of the request for the release of their proposals. The commission takes no position as to whether any of the information contained in either of those two proposals is excepted from public disclosure.¹

Section 552.110 of the Government Code protects the proprietary interests of private parties that have submitted information to governmental bodies by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause

¹Your request for this decision makes no reference to the status of the proposal that was submitted by the eighth prospective vendor, SAP Public Sector and Education. Accordingly, we assume that the commission has released that proposal to the requestor. See Gov't Code §§ 552.006, 552.221; Open Records Decision No. 664 (2000).

substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b); Open Records Decision No. 552 at 2 (1990). Section 552.305 of the Government Code provides that if a private party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good-faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). Upon receipt of notice under section 552.305(d), EpicEdge and IBM each had ten business days in which to submit to this office their respective arguments, if any, as to why their proposals represent or contain any information that is protected by section 552.110. *See* Gov't Code § 552.305(d)(2)(B). Neither EpicEdge nor IBM timely responded to the commission's notices. Accordingly, their proposals are not excepted from required public disclosure and 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).

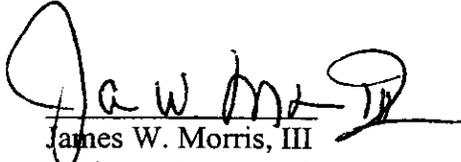
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/pr

Ref: ID# 137607

Enci. Submitted documents

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