



November 22, 2000

Mr. Ronald J. Neiman  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75029-9002

OR2000-4516

Dear Mr. Neiman:

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# 141650.

The City of Lewisville (the “city”) received a request for the selected vendor’s response to the city’s request for proposal of a public safety computer system. You have submitted the requested information to this office. The city takes no position as to whether any of the information in question is excepted from public disclosure. However, you believe that the requested information involves private or proprietary information that may be excepted from disclosure under sections 552.101, 552.104, or 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, you notified the affected private party, Vision Software, Inc. (“Vision”), of the request for information and of Vision’s right to submit comments to this office as to why the requested information should not be released. This office has received no correspondence from Vision. We have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information that is protected by common law and constitutional privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common law privacy); Open Records Decision No. 600 at 4 (1992) (*citing Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)) (constitutional privacy). Common law privacy protects the rights of individuals, not those of corporate entities such as Vision. *See* Open Records Decision No. 620 at 3-4 (1993). Corporations do not have a right to privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (*cited in Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); *see also* Open Records Decision No. 192 at 4 (1978).

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Section 552.104 protects the interests of governmental bodies, not those of private parties such as Vision that submit information to governmental bodies. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Furthermore, the protection afforded by section 552.104 generally ends after bidding has been completed and a contract has been awarded. *See* Open Records Decision No. 541 at 4-5 (1990) (discussing statutory predecessor). For these reasons, the requested information may not be withheld from disclosure under section 552.104.

Section 552.110 protects the proprietary interests of private parties that submit 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 substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a), (b). 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). Upon receipt of notice under section 552.305(d), Vision had ten business days in which to submit to this office its arguments, if any, as to why the requested information is protected from disclosure under section 552.110. *See* Gov’t Code § 552.305(d)(2)(B); Open Records Decision Nos. 552 at 5 (1990) (if governmental body takes no position on application of trade secrets component of section 552.110 to information in question, attorney general will accept private party’s claim for exception as valid if *prima facie* case for exception is made and no one rebuts claim as matter of law), 661 at 5-6 (1999) (private entity must make specific factual or evidentiary showing under section 552.110(b), not conclusory or generalized allegations, that substantial competitive injury likely would result from release of information at issue). As Vision submitted no comments to this office, we have no basis for concluding that the information in question is excepted from disclosure under either component of section 552.110. Therefore, as the requested information may not be withheld from disclosure under section 552.110 or any other raised exception, it must be released 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).

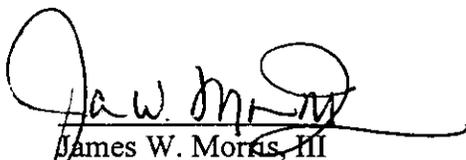
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 the General Services Commission 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,

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

JWM/er

Ref: ID# 141650

Encl: Submitted documents

cc: Ms. Deborah Fabacher  
Senior Contracts Administrator  
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