



June 6, 2001

Mr. Sam Haddad
Assistant General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-2356

Dear Mr. Haddad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148037.

The Comptroller of Public Accounts (the "comptroller") received a request for a copy of the current Contract for Records Administration and Management Services (the "contract"). You state that most of the requested information has been provided to the requestor. You assert, however, that some of the requested information may contain proprietary information that is protected from disclosure under section 552.110 of the Government Code and that you have submitted this request for a decision in order to give representatives of InTuition Solutions, Inc. ("InTuition") the opportunity to submit arguments against release of such information. 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). We have considered the arguments submitted by InTuition and reviewed the submitted information.

Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 now states in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law[.]

Upon review of the submitted information, we note that it consists of information that is made expressly public by section 552.022. *See* Gov't Code § 552.022(a)(3). The submitted information, which is subject to section 552.022(a), is not excepted from disclosure under the Public Information Act unless "expressly confidential under other law." Section 552.110 of the Government Code is considered "other law" for purposes of section 552.022.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision 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. InTuition does not argue that any of its information held by the comptroller constitutes trade secrets. The commercial or financial branch of section 552.110 requires the interested third party raising this exception to provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); Open Records Decision No. 661 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

InTuition seeks to withhold the following provisions of the contract under section 552.110(b) of the Government Code: Addendum 1; the Transmittal Letter; the Executive Summary; Section 3: Proposed Work Plan; Section 4: Respondent and Proposed Subcontractor's Reference and Experience; Section 8: Project Management Approach; and Section 9: Cost Proposal.

We note that, although InTuition states that disclosure of Section 9 would permit its competitors to undercut its proposals on future bids, we do not believe that pricing information is excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative); *see also* Gov't Code § 552.022(a)(3) (information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body is public information); Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Therefore, Section 9 must be released to the requestor.

InTuition states that Section 3 "is at the heart of InTuition's exclusive business practices and procedures" and "provides a [sic] detailed information about the manner by which it designs, implements and enhances pre-paid college accounts for its business partners." InTuition also explains that Section 8 "contains certain information concerning the internal management approach and business theory of InTuition" and "gives details to InTuition's competitiveness

in its industry,” including “business requirements, general system and detail system design, testing procedures, quality assurances and most importantly, InTuition’s approach to records administration.” Based on InTuition’s arguments and our review of the submitted information, we believe that InTuition has demonstrated that release of the information contained in Section 3 and Section 8 would cause it substantial competitive harm. Therefore, Section 3 and Section 8 may be withheld from disclosure under section 552.110(b) of the Government Code. However, we find that InTuition has not demonstrated that release of the information in Addendum 1, the Transmittal Letter, the Executive Summary, or Section 4 would cause it substantial competitive harm. Therefore, this information may not be withheld from disclosure.

To summarize, we conclude that: (1) Section 3 and Section 8 may be withheld from disclosure based on section 552.110(b); and (2) Addendum 1, the Transmittal Letter, the Executive Summary, Section 4, and Section 9 must be released to the requestor. As InTuition does not provide arguments against release of the remaining submitted information, the remaining information 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 Hadassah Schloss at 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148037

Encl: Submitted documents

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(w/o enclosures)