



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2004

Mr. David Caylor
City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2004-6725

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206883.

The City of Irving (the "city") received a request from Comprise Technologies, Inc. ("Comprise"), for information and materials from bids submitted in response to RFP No. 046-03F for the Irving Public Library. You state that the pricing information has already been released to the requestor; however, you assert that the remaining information responsive to the request may be excepted from disclosure under section 552.110 Government Code but take no position and make no argument regarding this exception. In addition, pursuant to section 552.305 of the Government Code, you notified five companies whose proprietary interests may be implicated by the request: Computers by Design, Inc. ("CBD"); Digital Access Control ("Digital"); Interface Electronics ("Interface"); TRACSYSTEMS, Inc. ("TRACSYSTEMS"); and TELUS Web Solutions ("TELUS"). *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 to disclosure in certain circumstances).

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 to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, CBD, Digital, Interface, and

TRACSYSTEMS have not submitted any comments to this office explaining how release of their bid information would implicate their proprietary interests. Therefore, these companies have provided us with no basis to conclude that they have protected proprietary interests in their bid proposals. *See* Gov't Code § 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 (1990).

TELUS responded to your notice by claiming that section 8.0 of its proposal is excepted from disclosure under section 552.110 of the Government Code. We note that this information was the subject of an earlier request for which you sought an attorney general decision. This office issued a ruling in response to that request in Open Records Letter No. 2004-3716 (2004). In that ruling we found that section 8.0 of the TELUS proposal was not excepted from disclosure under section 552.110 of the Government Code and concluded that the information must be released. We understand that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met.¹ Therefore, we conclude that the city must release section 8.0 of the TELUS proposal in accordance with Open Records Letter No. 2004-3716. *See* Gov't Code § 552.301(f).

We also note that some of submitted information is 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. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990).

In summary, the submitted information must be released to the requestor, in compliance with copyright law for any information protected by copyright.

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 206883

Enc. Submitted documents

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