



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2004

Ms. Leigh Hornsby
Public Information Officer
Collin County
210 South McDonald Street, Suite 636
McKinney, Texas 75069

OR2004-8055

Dear Ms. Hornsby:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209577.

Collin County (the "county") received a request for a copy of the final winning bid for licenses and implementation of a recent project. Although you take no position regarding disclosure of the requested information, you raise section 552.110 of the Government Code, claiming that portions of the requested information may contain proprietary information subject to exception under the Public Information Act (the "Act"). Pursuant to section 552.305(d) of the Government Code, you have notified interested third parties SAP Public Services, Inc. ("SAP") and Siemens Business Services, Inc. ("Siemens") of the request for information and of their right to submit arguments to us as to why any portion of the submitted information should not be released. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Chapter 552 of Government Code in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Both SAP and Siemens have stated that they have no objection to the release of non-proprietary information, but assume that the county will follow the terms of the confidentiality and non-disclosure portions of the Service Agreement with respect to any

remaining information. We note, however, that information that is subject to disclosure under the Act may not be withheld simply because the party submitting it anticipates or requests confidentiality. A governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific authority to keep the information confidential. See Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under the [predecessor to the] Act cannot be compromised simply by its decision to enter into a contract. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988)."); see also *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within scope of predecessor to section 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of predecessor to Act), *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 673 (Tex. App.—Fort Worth 1997, pet. denied) ("Because venue is fixed by law, any agreement or contract whereby the parties try to extend or restrict venue is void as against public policy."). Consequently, the requested information must fall within an exception to disclosure in order to be withheld. SAP and Siemens raise no exceptions to the disclosure of their information.

We note, however, that some of the 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, because SAP and Siemens raise no exceptions to the disclosure of their information and the information is not otherwise confidential by law, the county must release the submitted information in accordance with applicable copyright laws.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 209577

Enc. Submitted documents

c: Mr. Bruce Johnson
GEMS, Incorporated
8445 Freeport Parkway, #150
Irving, Texas 75063
(w/o enclosures)

Mr. Ivan Pojdl
Siemens
1881 Campus Commons Drive
Fifth Floor
Reston, Virginia 20191
(w/o enclosures)

Ms. Kim E. Chappell
Contracts Manager
SAP Public Services, Inc.
3999 West Chester Pike
Newton Square, Pennsylvania 19073
(w/o enclosures)