



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2004

Ms. Paulette Burks
County Clerk
Rockwall County
1101 Ridge Road, Suite 101
Rockwall, Texas 75087

OR2004-9522

Dear Ms. Burks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212629.

The Rockwall County Clerk (the "clerk") received a request for (1) communications between the clerk and Government Records Services, Inc. ("GRS") or Affiliated Computer Services, Inc. ("ACS") relating to an agreement to create or prepare electronic copies of public information or indices of such information for the clerk, (2) communications between the clerk and ACS, GRS, or another person "concerning providing electronic copies of public information in response to a request for such information" since 1999, (3) communications between the clerk and ACS, GRS, or any third person concerning pricing for electronic copies of public information in response to a request for such information, (4) communications between the clerk and ACS or GRS concerning ACS or GRS "20/20 Enhanced Software Agreement," and (5) communications between the clerk and ACS or GRS concerning the availability of the clerk's records on a governmental website. You assert that the requested information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, but make no arguments regarding the applicability of this exception. The clerk informs us that "my office will notify in writing the third party vendors who may be affected by [this] request." *See Gov't Code § 552.305(d)* (governmental body may notify interested third party of its receipt of the request for information and of third party's right to submit arguments to this office as to why the information at issue should not be released); *see also* 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 to disclosure in certain circumstances). We have reviewed the submitted information.

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). Courthouse Specialists has responded to the notice and states that it does not object to the release of the requested information pertaining to it. However, as of the date of this letter, no other third party has submitted to this office its reasons explaining why the requested information relating to it should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information, and none of it may be withheld on that basis. *See, e.g.*, 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).

We note, however, that the submitted information contains e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Section 552.137 also does not apply to the types of e-mail addresses listed in section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The clerk must, therefore, withhold the e-mail addresses that we have marked under section 552.137. The remaining information 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 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 212629

Enc. Submitted documents

c: Ms. Terri Wilmoth
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