



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2005

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2005-07404

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 230466.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information submitted in response to request for quotes on Network Infrastructure Upgrades. While you raise no exceptions to disclosure on behalf of the district, you state that release of the requested information may implicate the proprietary interests of third party Avnet, Inc. ("Avnet"). Accordingly, the district notified Avnet of the request and of its right to submit arguments to this office as to why its 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 to disclosure in certain circumstances). We have received correspondence from Avnet. We have considered the arguments submitted by Avnet and reviewed the submitted information.¹

¹We assume that, to the extent any additional responsive information existed on the date the district received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

Initially, we note that Avnet seeks to withhold “Case Studies” found on “pages 79 through 91” of its response. However, the district did not submit this information to us for review. Accordingly, this ruling does not address information related to Avnet beyond what the district submitted to us for review and is limited to the information the district submitted as responsive to the instant request. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Avnet contends that its personnel resumes are excepted from disclosure under section 552.102 of the Government Code, which excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). This section applies to information in the personnel file of an employee of a governmental body. Since the resumes at issue are not information in the personnel file of an employee of a governmental body, we determine that section 552.102 does not apply to this information. Therefore, the district may not withhold the submitted resumes under section 552.102(a).

Next, Avnet contends that certain “commercial and pricing information” is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to Gov’t Code § 552.104 is designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). As the district does not raise section 552.104, this section is not applicable to the information at issue. *See* Open Records Decision No. 592 (1991) (stating that governmental body may waive Gov’t Code § 552.104). Therefore, the district may not withhold any of the submitted information under section 552.104.

Avnet also claims that the portions of the submitted information are excepted from disclosure under section 552.110(b) of the Government Code. This section excepts from disclosure “[c]ommercial 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.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered Avnet’s arguments and reviewed the submitted information, we find that Avnet has adequately demonstrated that portions of the submitted information constitute commercial or financial information, the release of which would cause Avnet substantial competitive harm for purposes of section 552.110(b). Accordingly, the district must

withhold the information that we have marked pursuant to section 552.110(b). We find, however, that Avnet has only provided conclusory statements that release of the remaining submitted information at issue would harm its competitive interests, and has not provided specific factual evidence to substantiate the claim that release of such information would result in competitive harm to the company. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (1982) (information relating to organization, personnel, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). We therefore conclude that none of the remaining information at issue is excepted from disclosure under section 552.110(b).

We note, however, that some of the materials at issue may be 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 district must withhold the information we have marked pursuant to section 552.110(b) of the Government Code. The remaining information must be released, but any copyrighted information must be released in accordance with copyright law.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 230466

Enc. Submitted documents

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