



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 10, 2006

Mr. W. Montgomery Meitler  
Senior Attorney  
Texas Department of Family and Protective Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR2006-00317

Dear Mr. Meitler:

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# 240525.

The Texas Department of Family and Protective Services (the "department") received a request for the cover letter, executive summary, and cost proposal from all losing bidders to a certain request for proposals. Although the department claims no exceptions to disclosure, you state that the requested records may contain the proprietary information of certain third parties. Pursuant to section 552.305 of the Government Code, you notified Arthur Andersen LLP ("Arthur Andersen"), Andersen Consulting LLP (Andersen"), Ciber, Inc. ("Ciber"), Concerro, LP ("Concerro"), BAE Systems ("BAE"), Hewlett Packard Company ("Hewlett Packard"), Pricewaterhouse Coopers LLP ("Pricewaterhouse"), American Management Systems, Inc. ("AMS"), Periscope Holdings, Inc. ("Periscope"), Tata Infotech Ltd. ("Tata"), zCore Business Solutions ("zCore"), Sutherland Technologies, Inc. ("Sutherland"), DS3 Computing Solutions ("DS3") and Software As We Think ("Software") of the request and of their opportunity to submit comments to this office. *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 reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department has not complied with the statutory deadlines prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and

third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department has not complied with the statutory deadlines prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, because you contend that third party interests are at issue, we will consider the arguments for non-disclosure.

Next, 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Arthur Andersen, Andersen, Ciber, Concerro, BAE, Hewlett Packard, Pricewaterhouse, AMS, Periscope, Tata, zCore, Sutherland, DS3, and Software have not submitted to this office any reasons explaining why their information should not be released. We thus have no basis for concluding that any portion of their requested 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). As Arthur Andersen, Andersen, Ciber, Concerro, BAE, Hewlett Packard, Pricewaterhouse, AMS, Periscope, Tata, zCore, Sutherland, DS3, and Software have not demonstrated a basis to withhold any of their requested information, their information must be released.

AMS responded to the section 552.305 by asserting that its cost proposal should be withheld from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, 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 section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the

department does not seek to withhold any information pursuant to section 552.104, AMS's cost proposal may not be withheld pursuant to section 552.104 of the Government Code. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104). As AMS claims no other exceptions to disclosure, its 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, 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).

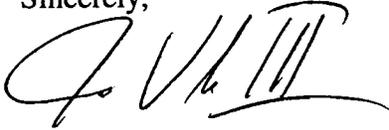
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'José Vela III'. The signature is fluid and cursive, with the first name 'José' being the most prominent.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 240525

Enc. Submitted documents

c: Adrienne O'Keefe  
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