ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2006

Mr. Bobby C. Wright
Executive Director
Galveston County Emergency Communication District
1353 FM 646 RD W, Suite 101
Dickinson, Texas 77539

OR2006-03385

Dear Mr. Wright:

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# 245592.

The Galveston County Emergency Communication District (the "district") received a request for responses to the district's 9-1-1 CPE request for proposals. You take no position with respect to the public availability of the information that you have submitted. You believe, however, that this information implicates the proprietary interests of AT&T (formerly SBC); CML Emergency Services ("CML"); Plant Equipment, Inc. ("PEI"); Sprint; and Tel Control, Inc. ("TCI"). You notified these parties of this request for information and of their right to submit arguments to this office as to why the information should not be released.[1] We also received correspondence from TCI. We have considered TCI's arguments and have reviewed the submitted information.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from AT&T, CML, PEI, or Sprint. Thus, none of these parties has

[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

demonstrated that any of the submitted information is proprietary for the purposes of the Act. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We next note that when a governmental body asks this office to decide whether requested information is excepted from public disclosure, it must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. If the governmental body fails to do so, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of 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). The presumption that information is public under section 552.302 can be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You inform us that the district received the request for the submitted information on January 19, 2006. Based on that date of receipt, the district's request for this decision was timely under section 552.301. However, the submitted materials include an identical request from the same requestor, dated December 1, 2005. Because you did not request this decision within the deadlines that the December 1 letter would appear to have triggered, your request presents issues with regard to the district's compliance with section 552.301. *See* Gov't Code § 552.301(b), (e). Nevertheless, TCI's claims under section 552.110 of the Government Code can provide a compelling reason for non-disclosure sufficient to overcome the presumption that information is public under section 552.302. Therefore, we need not determine whether the district complied with section 552.301.

Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial 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." *See* Gov't Code § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

> any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or

> to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If the governmental body takes no position on the application of the "trade secrets" component of section 552.110 to the information at issue, this office will accept a private person's claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.[2] *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

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 information at issue. *See also* 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).

TCI claims both aspects of section 552.110 with respect to its pricing information, project plan documents, and network architecture/diagram.[3] Having considered TCI's arguments, we have marked information that the district must withhold under section 552.110(b). We find that TCI has not presented a *prima facie* claim that any of the remaining information at issue qualifies as a trade secret under section 552.110(a). We also find that TCI has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would be likely to cause TCI substantial competitive injury. We therefore conclude that the district may not withhold any of the

---

[2]The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

> (1) the extent to which the information is known outside of [the company];
> (2) the extent to which it is known by employees and other involved in [the company's] business;
> (3) the extent of measures taken by [the company] to guard the secrecy of the information;
> (4) the value of the information to [the company] and [its] competitors;
> (5) the amount of effort or money expended by [the company] in developing the information;
> (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

[3]Although TCI also seeks to have its corporate financial results withheld under section 552.110, the district did not submit any of that information to this office in requesting this decision. This decision is applicable only to the information that the district submitted. *See* Gov't Code § 552.301(e)(1)(D).

remaining information that relates to TCI under section 552.110 of the Government Code. *See also* Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). With regard to the public availability of TCI's pricing information, the district has informed us that TCI was the winning bidder. Federal cases applying the analogous Freedom of Information Act exemption to prices in awarded government contracts have denied protection for cost and pricing information, reasoning that disclosure of prices charged the government is a cost of doing business with the government. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000). Moreover, we believe that the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision Nos. 514 (1988), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Furthermore, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency).

Lastly, we note that some of the information that must be released appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

In summary, the district must withhold the marked information in TCI's proposal under section 552.110(b) of the Government Code. The rest of the submitted information must be released. In releasing information that is protected by copyright, the district must comply 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).

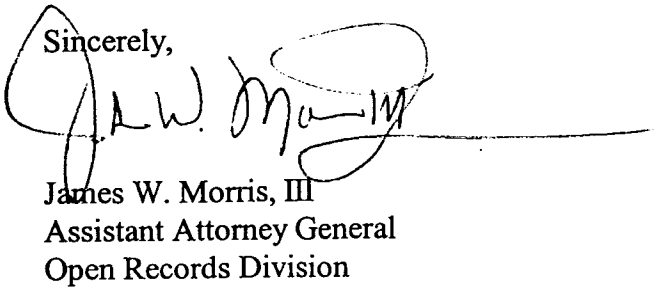
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 245592

Enc: Submitted documents

c: Mr. Jules N. Pedneault
Positron Public Safety Systems, Inc.
5101 Buchan Street
Montreal, Quebec Canada H4P 2R9
(w/o enclosures)

Mr. Jeff Robertson
Tel Control, Inc.
7902 Logan Drive, S.W.
Huntsville, Alabama 35802
(w/o enclosures)

Mr. Randy Hagan
AT&T
6500 W Loop South, Zone 2.7
Bellaire, Texas 77401
(w/o enclosures)

Mr. Ron Helterbrand
CML
1319 Amber Court
Keller, Texas 76248
(w/o enclosures)

Mr. Ralph Carnell
Plant Equipment, Inc.
P.O. Box 9007
Temecula, California 92589-9007
(w/o enclosures)

Mr. Byron Howard
Sprint
400 West 15th Street, Suite 1400
Austin, Texas 78701
(w/o enclosures)