



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2006

Ms. Angela G. Bishop
Attorney
Region 4 Education Service Center
7145 West Tidwell Road
Houston, Texas 77092-2096

OR2006-04410

Dear Ms. Bishop:

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# 247653.

The Region 4 Education Service Center (the "center") received a request for "copies of documents related to the Benefit Plan and Third Party Administrator Services project," including "the winning proposal for the project" and "the subsequent contract between the winning supplier and Texas Cooperative Purchasing Network." You state that you have released most of the requested information. While you claim no exceptions to disclosure on behalf of the center regarding the submitted information, you state that it may contain proprietary information excepted from disclosure under the Act. Accordingly, pursuant to section 552.305 of the Government Code, you state that you notified the interested third party, Entrust Agencies, Inc. ("Entrust"), of the request and of its right to submit arguments to this office as to why the information at issue should not be released to the requestor. *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 Entrust. We have considered Entrust's submitted arguments and reviewed the submitted information.

Entrust asserts that the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) 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).

We find Entrust has established that the release of some of the information at issue would cause it substantial competitive injury; therefore, the center must withhold this information, which we have marked, under section 552.110(b). However, we note that the public has a strong interest in the release of prices in government contract awards and such information is generally not excepted under section 552.110(b). *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors); 319 at 3 (1982) (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We find that Entrust has made only conclusory allegations that release of the remaining information at issue would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations; therefore, none of the remaining information at issue may be withheld pursuant to section 552.110(b). As no other exceptions to disclosure are claimed for the remaining information and it is not otherwise confidential, it must be released to the requestor.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 247653

Enc. Submitted documents

c: FOIA Request Coordinator
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