



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2007

Mr. Hans P. Graff
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2007-07631

Dear Mr. Graff:

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# 281170.

The Houston Independent School District (the "district") received a request for the proposals for the automated call out notification system project. You make no arguments as to whether the submitted information is excepted from disclosure. Instead, you indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified Notification Technologies, Inc. ("NTI"), Parlant Technology Inc. ("Parlant"), Saf-T-Net, MessageOne, Inc. ("MessageOne"), HyperAlert, Inc. ("HyperAlert") and US Netcom of the request and of each company's right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *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 under the Act in certain circumstances). We have received correspondence from MessageOne. We have reviewed the submitted arguments as well as the submitted information.

Initially, the district and MessageOne both inform this office that the requested information is the subject of Open Records Letter No. 2007-04313 (2007). Open Records Letter No. 2007-04313 determined that the marked portions of the information pertaining to MessageOne and NTI must be withheld pursuant to section 552.110 of the Government Code. Open Records Letter No. 2007-04313 also determined that Parlant, Saf-T-Net, and US Netcom each failed to demonstrate that any of its information at issue was proprietary for purposes of the Act. With regard to the requested information that is identical to the information previously requested and ruled upon by this office in that prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you must continue to rely on Open Records Letter No. 2007-04313 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.305 of the Government Code permits an interested third party to submit to this office within ten days of receiving notification of the request reasons why requested information should not be released. *See* Gov't Code § 552.305; *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 in Act in certain circumstances). Because HyperAlert did not submit arguments in response to the section 552.305 notice, we have no basis to conclude that this company's information is excepted from disclosure because of its proprietary interests. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Accordingly, the district may not withhold any portion of the submitted information based on the proprietary interests of this third party.

In summary, the district must withhold and release the requested information that is subject to the previous determination in Open Records Letter No. 2007-04313. The remaining information 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 281170

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