



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 13, 2008

Ms. Cara Leahy White  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
I-30 At Bryant-Irvin Road  
600 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2008-02080

Dear Ms. White:

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# 302316.

The City of Southlake (the "city") received a request for "the winning proposal and proposals from the other vendors who submitted a [Financial Software] bid." The requestor subsequently clarified the request to exclude information pertaining to the requestor's company.<sup>1</sup> Although you take no position regarding the public availability of the requested information, pursuant to section 552.305 of the Government Code you have notified the interested third parties of the request and of each company's right to submit arguments to this office as to why the information should not be released.<sup>2</sup> *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 Act in certain circumstances). We have reviewed the submitted information.

You inform this office that the requested information relating to Tyler, Innoprise, and Cogsdale was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2007-6079 (2007). You assert that because the

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<sup>1</sup>*See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>The city notified the following third parties of the request for information: Cogsdale Corporation ("Cogsdale"); Innoprise Software, Inc. ("Innoprise"); New World Systems ("New World"); and Tyler Technologies ("Tyler").

requestor did not inspect the information you made available for inspection pursuant to our ruling in Open Records Letter No. 2007-6079, the prior request has been withdrawn by operation of law pursuant to section 552.225 of the Government Code. However, this does not constitute a change in the law, facts, and circumstances on which the previous ruling is based. See Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Therefore, the city must dispose of the information relating to Tyler, Innoprise, and Cogsdale in accordance with the previous ruling. See Gov't Code § 552.301(a); ORD 673 at 6-7.

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, New World has failed to submit to this office reasons explaining why the company's information should not be released. We thus have no basis for concluding that any portion of the New World's 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).

We note that some of the submitted information bears notice of copyright protection. 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 city must dispose of the information relating to Tyler, Innoprise, and Cogsdale in accordance with our ruling in Open Records Letter No. 2007-6079. The remaining submitted information must be released to the requestor; however, any information protected by copyright 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 302316

Enc. Submitted documents

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