



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2008

Ms. Mari M. McGowan  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2008-03986

Dear Ms. McGowan:

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# 305614.

The McKinney Independent School District (the "district"), which you represent, received a request for "each of the submitted cost proposals for RFP #2006-335, Business, Human Resources, and Student Information Systems and Implementation Services." You state that you have released some information to the requestor. You believe that the submitted information may be excepted from disclosure under section 552.110 of the Government Code, but take no position with respect to the applicability of this exception. Instead, pursuant to section 552.305 of the Government Code, you state that you have notified Administrative Assistants, Ltd. ("AAL"); eVerge Group, Inc. ("eVerge"); Insignia Software ("Insignia"); Maximus, Inc. ("Maximus"); Skyward; SunGard, THE, Inc. ("SunGard"); and Tyler Technologies, Inc. ("Tyler") of the request and of the right of each company to submit arguments to this office as to why the information should not be released.<sup>1</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 the applicability of exception to disclose under Act in certain

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<sup>1</sup>The district also states it has notified NCS Pearson, Inc. ("Pearson") of the request. We note, however, that none of the information at issue pertains to Pearson. Additionally, in correspondence between Pearson and the district that the district forwarded to our office, Pearson confirms that it did not submit a proposal in response to the request for proposals at issue in this request.

circumstances). We have considered all submitted arguments and reviewed the submitted information.

Initially, we note that the submitted information pertaining to AAL, eVerge, Skyward, and Tyler was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2007-02030 (2007) and 2008-02219 (2008). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, 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 Nos. 2007-02030 and 2008-02219 as previous determinations. *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).

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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Insignia or Maximus explaining how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of either company. *See, e.g.,* Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Thus, none of the submitted information may be withheld based on the proprietary interests of either Insignia or Maximus.

You have submitted correspondence from SunGard to the district in which SunGard argues that some of its information is excepted from disclosure because it is marked as privileged and confidential. We note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless SunGard's information comes within an exception to disclosure, it must be released, notwithstanding

any expectation or agreement to the contrary. As SunGard does not claim an exception to disclosure, SunGard's information must be released to the requestor.

In summary, the district must continue to follow Open Records Letter Nos. 2007-02030 and 2008-02219 as previous determinations with respect to the information pertaining AAL, eVerge, Skyward, and Tyler. 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 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).

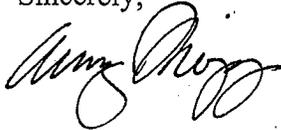
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mcf

Ref: ID# 305614

Enc. Submitted documents

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