



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2008

Ms. Imelda Martinez  
Office of Legal Services  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2008-05555

Dear Ms. Martinez:

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# 308423.

The Corpus Christi Independent School District (the "district") received a request for information relating to a specified request for proposals and two named business entities, including the awarded contract, all proposals submitted, and evaluation documents. Although the district takes no position on the public availability of the submitted information, you believe that the information may implicate the proprietary interests of Prologic Technology Systems ("Prologic") and SunGard Bi-Tech, LLC ("SunGard"). You notified Prologic and SunGard of this request for information and of their right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We received correspondence from SunGard. We have considered SunGard's arguments and have reviewed the submitted information. We assume that the district has released any other information that is responsive to this request, to the extent that such information existed when the district received the request. If not, then any such information must be released immediately.<sup>2</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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<sup>1</sup>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).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We first note that SunGard's submitted proposal was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2008-03753 (2008). There is no indication of any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the district must dispose of the information in SunGard's proposal in accordance with Open Records Letter No. 2008-03753. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We next 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 of the Government Code 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 Prologic. Therefore, because Prologic has not demonstrated that any of the remaining information at issue is proprietary for the purposes of the Act, the district may not withhold any of the remaining information on the basis of any proprietary interest that Prologic may claim. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note that some of the information in Prologic's proposal falls within the scope of section 552.136 of the Government Code.<sup>3</sup> Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We have marked insurance policy numbers that the district must withhold under section 552.136.

Lastly, we address the remaining information at issue, which is contained in a "Software License Agreement" (the "agreement") between the district and SunGard. Although SunGard has submitted arguments under section 552.110 of the Government Code, we note that the company claims this exception for specified portions of its proposal rather than for any information contained in the agreement.<sup>4</sup> Therefore, because SunGard's arguments do not encompass the information in the agreement, the district may not withhold any of that information under section 552.110 of the Government Code.

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<sup>3</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>4</sup>Section 552.110 excepts from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "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." Gov't Code § 552.110(a)-(b); *see* ORD 552 at 5 (1990), 661 at 5-6 (1999).

In summary: (1) the district must dispose of the information in SunGard's proposal in accordance with Open Records Letter No. 2008-3753; and (2) the marked insurance policy numbers must be withheld from the requestor under section 552.136 of the Government Code. The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

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

JWM/ma

Ref: ID# 308423

Enc: Submitted documents

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