



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2008

Mr. W. Montgomery Meitler  
Assistant Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2008-06560

Dear Mr. Meitler:

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# 310146.

The Texas Education Agency ("TEA") received two requests from the same requestor for the proposals of the winning reviewer and the winning presenter regarding a specified request for proposals. You claim that some of the requested information is excepted from disclosure under section 552.136 of the Government Code. Although you take no position on the public availability of the remaining information, you believe that it may implicate the proprietary interests of ICF Incorporated, L.L.C. ("ICF") and Texas Center for Educational Research ("TCER"). You notified ICF and TCER of these requests 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 ICF. We have considered all of the submitted arguments and reviewed the information you submitted.

We first 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 TCER. Thus, as TCER has not demonstrated that any of

---

<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).

its information is proprietary for the purposes of the Act, TEA may not withhold any of TCER's information on the basis of any proprietary interest that TCER may claim. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we consider ICF's claims under sections 552.104 and 552.110 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies, not the proprietary interests of private parties such as ICF. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Thus, because TEA does not claim this exception, none of the submitted information may be withheld under section 552.104 of the Government Code.

Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and (2) "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). We understand ICF to claim an exception under section 552.110(b) for portions of its proposal. 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 information at issue. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered ICF's arguments and reviewed the information at issue, we conclude that TEA must withhold ICF's cost information and some of the company's customer information under section 552.110(b). We have marked that information. Although ICF also claims section 552.110(b) for the names of other customers, we note that those customers are identified on ICF's internet website. We are unable to conclude that the release of customer information that also is published on ICF's website would be likely to cause the company any substantial competitive harm. Likewise, we conclude that ICF has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would cause the company substantial competitive harm. We therefore conclude that TEA may not withhold any other information relating to ICF under section 552.110. *See* Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

Lastly, we address TEA's claim under section 552.136 of the Government Code, which 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 agree that TEA must withhold the bank account number that you have marked under section 552.136.

In summary: (1) TEA must withhold the information that we have marked under section 552.110 of the Government Code; and (2) the bank account number that you have marked must be withheld under section 552.136 of the Government Code. The rest of the information must be released.

You also ask this office to issue a decision that would authorize TEA to withhold access device numbers from the public under section 552.136 of the Government Code without the necessity of again requesting a decision by this office under the Act. *See id.* § 552.301; Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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).

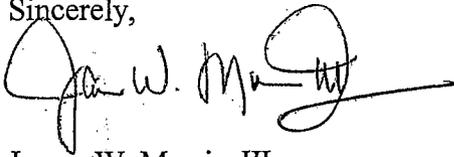
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

JWM/ma

Ref: ID# 310146

Enc: Submitted documents

c: Dr. Patricia Keith  
Keith Research & Evaluation, LLC  
701 Brazos Street Suite 500  
Austin, Texas 78701  
(w/o enclosures)

Mr. Timothy M. Lowry  
ICF Incorporated, L.L.C.  
9300 Lee Highway  
Fairfax, Virginia 22031-1207  
(w/o enclosures)

Dr. Catherine Maloney  
Texas Center for Educational Research  
12007 Research Boulevard  
Austin, Texas 78767  
(w/o enclosures)