



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2008

Ms. Martha McCabe  
General Counsel  
District Office of Legal Affairs  
Alamo Community College District  
201 West Sheridan Street  
San Antonio, Texas 78204-1429

OR2008-07969

Dear Ms. McCabe:

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# 312700.

The Alamo Community College District (the "district") received a request for the district's current contract for elevator and escalator maintenance, the current annual costs under the contract, and the amount paid to EMR Elevator Company ("EMR") in 2007. You claim that the requested information is excepted from disclosure under section 552.110 of the Government Code. You also state that the district believes the requested information may implicate the proprietary interests of EMR. Accordingly, you inform us that pursuant to section 552.305 of the Government Code, the district notified EMR of the request for information and of its right to submit arguments explaining why the information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 certain circumstances). We have considered the arguments you make and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the district's representation that the submitted information has been previously ruled upon in Open Records Letter No. 2008-00228 (2008). Although you seek to withhold some of the information currently at issue pursuant to this prior ruling, we note that Open Records Letter No. 2008-00228 was issued to the City of San Antonio. Because the instant request for information was received by a different governmental body, Open Records Letter No. 2008-00228 cannot be relied on as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). However, we will address your arguments for this and the other requested information.

The district raises section 552.110 of the Government Code. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. A governmental body, however, may assert section 552.110 on behalf of an interested third party. We understand the district to raise section 552.110 on behalf of EMR, thus we will address the district's argument under section 552.110.

Section 552.110(b) of the Government Code protects "[c]ommercial 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(b). This exception to disclosure 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. *Id.*

You contend that the release of the submitted information would cause substantial competitive harm to EMR. After reviewing your arguments and the information at issue, however, we find that you have made only conclusory allegations that release of this information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue); *see also* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Furthermore, EMR has not submitted to this office any reasons explaining why its information should not be released. Therefore, EMR has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. Accordingly, we determine that none of the submitted information is excepted from disclosure under section 552.110(b). Thus, the district may not withhold any portion of the submitted information under section 552.110 of the Government Code. As no other exceptions to disclosure have been raised, 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,



Nancy E. Griffiths  
Assistant Attorney General  
Open Records Division

NEG/jb

Ref: ID# 312700

Enc. Submitted documents

c: Mr. Clint Matthews  
National Organizer  
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(w/o enclosures)