



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2008

Ms. Zindia T. Thomas
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2008-09433

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 315472.

The Office of the Attorney General (the "OAG") received a request for "the winning proposal to the Statement of Work under PSP #1: Convert Child Support Interactive (CSI) issued February 15, 2008." The OAG states it will release some of the information but argues some of the remaining information is excepted from disclosure under sections 552.104 and 552.137 of the Government Code.¹ In addition, the OAG states some information may implicate the proprietary interest of RFD & Associates, Inc. ("RFD") and thus has notified RFD of the request for information. Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). We have considered the OAG's claimed exceptions and have reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The

¹The OAG states it has withheld a social security number pursuant to section 552.147(b) of the Government Code, which permits a governmental body to withhold a living person's social security number without seeking a decision from this office. Gov't Code § 552.147(b).

purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

The OAG explains the procurement of technological services is an ongoing process through 2008 and may be extended through 2011. Furthermore, the OAG explains:

six vendors were pre-qualified and awarded a "zero dollar purchase order." Each vendor had submitted pricing schedules with a "not to exceed price" for future [Child Support Division] technology services projects. The procurement for those projects is an ongoing competition among the six awardees. The [Child Support Division] will issue statements of work, and the awardees will compete by submitting solutions and prices at or below their respective "not to exceed" pricing schedules. . . . Once a project under the PSP purchase order is awarded to one or more of the six awardees, a purchase order change notice . . . will be issued. [footnote omitted]

The OAG asserts release of the information it marked would prevent it from receiving the most favorable offers from vendors and obtaining a price below the "not to exceed" schedules because "[r]eleasing the pricing information regarding the winning bidder for CSI will enable the competing awardees to adjust their bids based upon the pricing models and "not to exceed" schedules of their respective competitors." Lastly, the OAG argues releasing RFD's pricing model would jeopardize the OAG's future ability to obtain the best offer for renewal of the same contracts. Based on these representations, we conclude the OAG has shown actual or specific harm in a particular competitive situation if most of the information it marked were to be released. However, the OAG has not shown how release of Column G reveals pricing information or the pricing model so as to harm the OAG's ability to obtain the best offer in the future. Thus, except for Column G, the OAG may withhold the information it marked in Exhibit B under section 552.104.

As for the remainder of the information, RFD did not submit arguments in response to the section 552.305 notice. Therefore, we have no basis to conclude that RFD's information is proprietary. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

Lastly, the OAG asserts section 552.137 of the Government Code excepts a private e-mail address from public disclosure. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent; [or]

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]

Gov't Code § 552.137. Because the e-mail address at issue falls within the scope of section 552.137(c), the OAG may not withhold it under section 552.137(a).

In summary, except for Column G, the OAG may withhold the information it marked in Exhibit B under section 552.104. The OAG must release the remaining information.

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). If the governmental body does not file suit over 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 315472

Enc: Submitted documents

c: Ms. Debra Jackson
Protech Solutions, Inc.
124 West Capitol Avenue, Suite 1500
Little Rock, Arkansas 72201
(w/o enclosures)

Ms. Anne Davison
RFD & Associates, Inc.
401 Camp Craft Road
Austin, Texas 78746
(w/o enclosures)