



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2008

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2008-13895

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# 324349.

The Dallas Independent School District (the "district") received a request for all contracts, RFPs, promotion materials, or other records pertaining to the district's business relationship with Calence, LLC ("Calence"). You state that the district will provide access to a portion of the submitted information. The district takes no position on whether the submitted information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of Calence. Accordingly, you inform us, and provide documentation showing, that you notified Calence of the request and of its right to submit arguments to this office as to why its information should not be released.<sup>1</sup> See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested

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<sup>1</sup>Calence seeks to withhold information related to its proposal to RFP# RK 202908, which Calence has submitted for our review, under sections 552.110 and 552.136 of the Government Code. However, RFP# RK 202908 was not submitted by the district to this office for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received arguments from representatives of Calence. We have considered the submitted arguments and have reviewed the submitted information.

Initially, we note that the submitted information consists of RFP# RT 202922, Technical Support. Calence argues that this office has previously ruled on the submitted information in Open Records Letter No. 2008-08838 (2008). However, in Open Records Letter No. 2008-08838, we ruled on RFP# RK 202908, Network Equipment. Therefore, because the submitted information is not precisely the same information addressed in Open Records Letter No. 2008-08838, that decision is not a previous determination. *See* Open Records Decision No. 673 (2001) (requested information must be precisely the same information as was addressed in prior attorney general ruling for the first type of previous determination to exist). We will, however, consider Calence's arguments with respect to the submitted information.

Calence seeks to withhold its customer information under section 552.110(b) of the Government Code. Section 552.110(b) 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.* § 552.110(b); *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review of Calence's arguments and the information at issue, we find that Calence has made a specific factual or evidentiary showing that the release of its customer information, which we have marked, would cause it substantial competitive harm. Thus, this marked information must be withheld pursuant to section 552.110(b).

Calence also raises section 552.136 of the Government Code for its insurance policy numbers. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, 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). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In

making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. The remaining information must be released, but only in accordance with copyright law.

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).

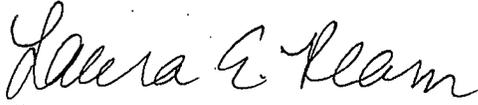
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 324349

Enc. Submitted documents

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