



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2008

Ms. Yushan Chang
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2008-14505

Dear Ms. Chang:

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# 325602.

The City of Houston Municipal Courts Department (the "city") received a request for the city's current services contract with Maximus, Inc. ("Maximus"), including all amendments, exhibits, and change orders. You state that you have released a portion of the requested information. Although the city takes no position as to the disclosure of the remaining requested information, you indicate that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the city notified Maximus of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Maximus has responded to the notice and argues that the submitted information is excepted from disclosure under section 552.110 of the Government Code. We have considered the submitted arguments and information.

Maximus asserts that the submitted information is confidential under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[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). 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 requested information. *See* Open Records Decision No. 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Maximus asserts that the submitted information contains “sensitive financial and proprietary commercial information.” However, we note that the submitted information consists of a government contract between the city and Maximus. This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, Maximus only makes a generalized allegation that the release of the submitted information would result in substantial damage to the competitive position of the company. ORD 661 at 5-6 (section 552.110(b) requires specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of information). Thus, we conclude that Maximus has not demonstrated that substantial competitive injury would likely result from the release of the submitted information. Accordingly, the city may not withhold any of the submitted information under section 552.110(b) 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). Accordingly, the submitted information must be released to the requestor in accordance with copyright.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 325602

Enc. Submitted documents

c: Mr. Bruce Perkins
Fritz, Byrne, Head & Harrison, LLP
98 San Jacinto Boulevard, Suite 2000
Austin, Texas 78701
(w/o enclosures)

Ms. Janet Matthews
VP & CFO
Jefferson Management Systems
17045 El Camino Real, Suite 100
Houston, Texas 77058
(w/o enclosures)