



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2008

Ms. Kari Hutchison
Director-Communications
Comal Independent School District
1404 IH 35 North
New Braunfels, Texas 78130

OR2008-15531

Dear Ms. Hutchison:

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# 327447.

The Comal Independent School District (the "district") received a request for documentation concerning a specified contractor and a mold remediation settlement.¹ You state that you have released some of the responsive information to the requestor. Although you express no position with respect to the public availability of the submitted information, you believe that its release may implicate the proprietary interests of third parties. Accordingly, you have notified HDR Inc. ("HDR") and Rimkus Consulting Group, Inc. ("Rimkus") of the request and of their opportunity to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of an exception to disclosure in certain circumstances). We have reviewed the submitted information.

We note that an interested third-party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as

¹You inform us that the requestor clarified his original request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, HDR and Rimkus have not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Therefore, HDR and Rimkus have not provided us with any basis to conclude that they have a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(b) (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); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, none of the submitted information may be withheld based on the proprietary interests of HDR or Rimkus. As you raise no exceptions to disclosure, the submitted information must be released to the requestor.

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).

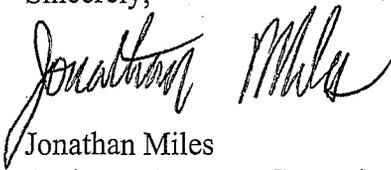
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 327447

Enc. Submitted documents

c: Mr. Jon Burress
c/o Ms. Kari Hutchison
Director-Communications
Comal Independent School District
1404 IH 35 North
New Braunfels, Texas 78130
(w/o enclosures)

Rinkus Consulting Group
4801 NW Loop 410, Suite 700
San Antonio, Texas 78229
(w/o enclosures)

HRD, Inc.
1100 NE Loop 410, Suite 200
San Antonio, Texas 78209
(w/o enclosures)