



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

Mr. Hilario Diaz
Project Specialist
Workforce Solutions Cameron
245 East Levee
Brownsville, Texas 78520

OR2009-05392

Dear Mr. Diaz:

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# 340762.

The Workforce Solutions Cameron (the "workforce") received a request for a specified proposal submitted to the workforce by UMOS, Inc. ("UMOS"). Although you take no position as to the disclosure of the submitted proposal, you state that release of this information may implicate the proprietary interests of UMOS. Accordingly, you notified UMOS of the request and of its opportunity to submit comments to this office as to why its information should not be released to the requestor. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits a governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered comments received from UMOS and reviewed the submitted information.

Initially, we must address the workforce's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b)*. In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that

would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The workforce received the present request for information on February 2, 2009. However, the commission did not ask for the attorney general's opinion or submit the requested information for review until February 25, 2009. Thus, we find that the workforce failed to comply with both its ten- and fifteen-day deadlines.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because UMOS' interests are at stake, we will consider arguments received from that company

UMOS raises section 552.110(b) of the Government Code for the submitted proposal. 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* Open Records Decision No. 661 (1999).

In this instance, UMOS generally asserts that its proposal should be withheld under section 552.110(b) because it contains managerial strategies and operational designs and it documents UMOS's internal capacity to administer multiple services and products contracts. However, UMOS has not identified those particular portions of its proposal that contain this information to be withheld under section 552.110(b). Furthermore, UMOS provides no specific factual or evidentiary showing that release of any particular portion of its proposal would cause it substantial competitive harm under section 552.110(b). Thus, we find that UMOS has failed to demonstrate the applicability of section 552.110(b) to any portion of its proposal, and no information may be withheld on this basis. As no exceptions are raised by the workforce, the submitted proposal must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 340762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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