



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2009

Mr. Jose R. Guerrero
Ramirez & Guerrero, L.L.P.
Attorneys for Region One Education Service Center
Lone Star National Bank Building
600 East Nolana Avenue, Suite 200
McAllen, Texas 78504

OR2009-09085

Dear Mr. Guerrero:

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# 347728 (Region One File No. 09-087G).

The Region One Education Center (the "center"), which you represent, received a request for copies of invoices, purchase orders, agreements, bid responses, customer lists, and other information relating to the center's purchase or resale of telecommunication services for the years 2008-2009.¹ You state that the center is releasing a redacted copy of some of the requested information to the requestor. You claim that portions of submitted information are excepted from disclosure under section 552.104 and 552.110.² You further claim that portions of the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that

¹We note that the center asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

²We note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, unless the third parties whose proprietary rights are implicated object to release of the information at issue, the center may not withhold this information under section 552.110 of the Government Code.

you have notified Time Warner Cable and AT&T of the center's receipt of the request for information and their 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). We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, 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 to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from Time Warner Cable or AT&T explaining why their information should not be released. Thus, we have no basis for concluding that any portion of the submitted information pertaining to these third parties constitutes proprietary information, and the center may not withhold any portion of their information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You explain that the center provides school districts with internet access through the center's ESCONNET program. Specifically, you state that "[the center] contracts with a commercial internet service provider for the purchase of bandwidth, which the center then sells to school

districts on a competitive basis.” You state that the center competes with private entities in response to requests for bids issued by school districts for purchase of internet services. You further explain that the center does not receive state funding for salaries and benefits of ESCONNET program personnel and that these costs are covered by sales revenue generated by the ESCONNET program. Furthermore, you indicate that release of the pricing and customer information you have marked would reveal information that it is not widely known to the center’s competitors and would provide them with a clear advantage over the center in sales of internet services to school districts. Based on your representations and our review, we find that you have established that the center has legitimate marketplace interests for the purposes of section 552.104. We also find that you have demonstrated that the release of the information at issue would cause actual or potential harm to these interests. Accordingly, you may generally withhold the submitted information under section 552.104 of the Government Code. However, we find that release of a portion of this information, which we have marked, would not cause actual or potential harm to these interests and may not be withheld under section 552.104.

We note that some of the remaining information contains account numbers.³ Section 552.136 of the Government Code provides 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); *see also* § 552.136(a) (definition of “access device number” includes account numbers). The center must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

In summary, with the exception of the information we have marked for release, the center may withhold the information at issue under section 552.104 of the Government Code. The center must withhold the information we have marked under section 552.136 of the Government Code.

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

³The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 347728

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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