



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2010

Ms. Betty Voights
Executive Director
Capital Area Council of Governments
P.O. Box 17848
Austin, Texas 78760-7848

OR2010-00391

Dear Ms. Voights:

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# 366747.

The Capital Area Council of Governments (the "council") received a request for all scoring sheets and all proposals submitted in response to a specified request for proposals. Although you take no position with respect to the public availability of the requested information, you state that third parties RCC Consultants, Inc. ("RCC") and Federal Engineering, Inc. ("Federal Engineering") have informed you that they wish portions of their information withheld. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclosure under the Act in certain circumstances). You have submitted correspondence from Federal Engineering, which claims that its information is subject to federal copyright law. We have considered Federal Engineering's argument and 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 to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, RCC has not submitted to this office any reasons explaining why its information should not be released. Therefore, this company has provided us with no basis to conclude that it has protected proprietary interests in any of the submitted information. *See, e.g., id.* § 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. 552 at 5 (1990) (party must establish *prima facie* case that information is trade

secret), 542 at 3 (1990). Accordingly, we conclude that the council may not withhold any portion of the submitted information on the basis of any proprietary interest RCC may have in the information.

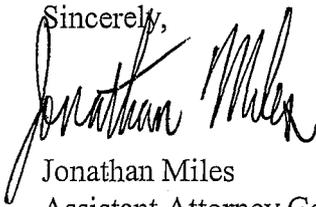
Finally, we agree that portions of the submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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 council must release the submitted information, but any copyrighted information must be released in accordance with copyright law.

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_or1.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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 366747

Enc. Submitted documents

c: Requestor
(w/o enclosures)