



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2010

Ms. Mary Kozak  
El Paso County 9-1-1 Emergency Communications District  
200 North Kansas Street  
El Paso, Texas 79901

OR2010-01744

Dear Ms. Kozak:

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# 370226.

The El Paso County 9-1-1 Emergency Communications District (the "district") received a request for all proposals submitted in response to a specified request for proposals and the related contract. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Further, you state the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified Intergraph Corporation ("Intergraph"), Logistic Systems, Inc. ("Logistic"), AT&T, Positron Public Safety Systems ("Positron"), and Tritech Software Systems ("Tritech") of the request for information and of 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 reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office, (1) 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. Gov't Code § 552.301(e)(1)(A)-(D). You state the district received the request for information on November 18, 2009. However, you did not submit the requested information for our review until December 17, 2009. Thus, the district has failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007 Amarillo, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when 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 third party interests are at stake, we will consider whether the submitted information must be withheld on the basis of the third parties' proprietary interests.

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, Intergraph, Logistic, AT&T, Positron, and Tritech have not submitted to this office any reasons explaining why their submitted information should not be released. Therefore, these companies have failed to provide us with any basis to conclude they have a protected proprietary interest in any of the submitted information. *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. Although the district raises section 552.110 of the Government Code for the third parties' information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110 for the submitted information. Accordingly, the district may not withhold any portion of the submitted information on the basis of any proprietary interest Intergraph, Logistic, AT&T, Positron, and Tritech may have in this information.

We note that some of the materials at issue appear 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 protected by copyright. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See 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). Thus, the submitted information must be released, but any copyrighted information may only 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\\_orl.php](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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 370226

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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