



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2010

Ms. Vanessa Russell-Evans
Cox Smith Matthews Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2010-07361

Dear Ms. Russell-Evans:

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# 380174.

The Matagorda County Hospital District (the "district"), which you represent, received a request for a specified contract. Although you take no position with respect to the public availability of the submitted information, you state that the submitted documents may contain proprietary information of a third party subject to exception under the Act. Accordingly, you provide documentation showing that the district notified Digisonics, Inc. ("Digisonics") of the request for information and of the company's right to submit arguments to this office as to why the submitted 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). Digisonics has responded to this notice. We have considered Digisonics's arguments and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Section 552.301 of the Government Code prescribes 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(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). You inform us that the district received the present request for information on December 9, 2009. However, you did not request a ruling from this office, nor did you submit a copy of the requested information, until March 16, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the district has failed to comply with the requirements of section 552.301.

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; *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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Accordingly, we will consider whether the interests of Digisonics provide a compelling reason to withhold any portion of the submitted information from disclosure.

Digisonics indicates that its pricing information is excepted from disclosure under section 552.110(b) of the Government Code. 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.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Digisonics asserts its pricing information is excepted under section 552.110 because “pricing information is confidential [f]inancial [i]nformation for Digisonics[.]” In this instance, Digisonics has made only a conclusory allegation that its pricing information is confidential and has provided no specific factual or evidentiary showing to support an allegation that substantial competitive injury would likely result from release of the information at issue. Further, we note that the pricing information of a government contractor, such as Digisonics in this instance, is generally not excepted under section 552.110(b) because this office

considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reason that disclosure of prices charged government is a cost of doing business with government). We therefore conclude that none of the information at issue may be withheld under section 552.110(b) of the Government Code. As there are no further arguments against disclosure, the submitted information 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 380174

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)