



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Warren M. S. Ernst  
Chief General Counsel Division  
Office of the City Attorney  
City of Dallas  
1500 Marilla, Room, 7BN  
Dallas, Texas 75201

OR2010-07695

Dear Mr. Ernst:

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# 380735.

The City of Dallas (the "city") received a request for copies of Progressive Financial's ("Progressive") winning proposal in response to RFB number BL0926, as well as any evaluation criteria, internal staff scoring sheets, and other information related to making this selection. You state you will provide some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state that releasing the submitted information may implicate the interests of third parties. Accordingly, you have notified Progressive and Symantec Corporation ("Symantec") of the request and of their opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have reviewed the submitted information.

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 letter, none of the third parties you notified have submitted comments to this office explaining why any portion of the submitted information

should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the notified third parties' proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the city may not withhold any portion of the submitted information based on the proprietary interests of Progressive and Symantec.

We note that a portion of the submitted information is 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). As you raise no exceptions to disclosure, we find the submitted information must be released to the requestor, but any information subject to copyright may only be released in accordance with federal 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 380735

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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