



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2010

Ms. Sheila P. Haddock  
General Counsel  
Clear Creek Independent School District  
2425 East Main Street  
League City, Texas 77573-2799

OR2010-08639

Dear Ms. Haddock:

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# 382537.

The Clear Creek Independent School District (the "district") received a request for the following: 1) bid proposals, including Alpha Media's proposal for advertising services on school buses, in reference to RFCSP 2010.409; 2) the internal notes and negotiations between responding parties to the bid proposals and the district's purchasing department and internal staff; 3) matrix or decision tree on all vendor scoring for a final award of a contract; and 4) school board minutes pertaining to RFCSP 2010.409. The district subsequently received a second request for Alpha Media's bid proposal. You take no position on whether the requested information is excepted from disclosure. However, you state release of submitted bid proposal may implicate the proprietary interests of Alpha Media. Accordingly, you have notified Alpha Media of the request and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received correspondence from Alpha Media. We have reviewed the submitted information.

Initially, we note you have only submitted Alpha Media's bid proposal for our review. To the extent information responsive to the remaining portions of the first request existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We note that the district failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) provides that the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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).

You inform us that the district received the first request for information on March 4, 2010; therefore, the district's deadlines under subsections 552.301(b) and 552.301(e) were March 18 and March 25, respectively. The district requested this decision by fax on April 8, 2010. Thus, the district did not comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. 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 can provide a compelling reason to overcome the presumption of openness, we will consider Alpha Media's comments.

Although Alpha Media states that its bid proposal is proprietary information that should be withheld from potential competitors, it has not raised any exceptions to disclosure under the Act or provided any arguments against disclosure. Therefore, we have no basis to conclude

that Alpha Media has a protected proprietary interest in the submitted information. *See* Gov't Code § 552.110; 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. Accordingly, the district may not withhold any portion of the submitted information based upon the proprietary interests of Alpha Media.

We note that the submitted information appears to be copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. 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 copyrighted materials, 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, any copyrighted information may only be released in accordance with copyright law.

In summary, the district must release the information at issue. However, in releasing this information, the district must do so 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/jb

Ref: ID#382537

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Mr. Michael T. Beauchamp  
President, Alpha Media  
25 Highland Park Village, Suite 100-823  
Dallas, Texas 75205  
(w/o enclosures)