



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

Mr. Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P
For City of Allen
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2010-15148

Dear Mr. Gorfida:

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# 395720.

The City of Allen (the "city"), which you represent, received a request for information pertaining to the procurement for the Stacy Road Public Safety Communications Tower. You state you have released some of the requested information. Although you state the city takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Motorola, Inc. ("Motorola"). Accordingly, you state, and provide documentation showing, the city notified Motorola of the request 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act 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, we have not received comments from Motorola explaining why its information should not be released. Therefore, we have no

basis to conclude Motorola has protected proprietary interests in this information. *See id.* § 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; *see also* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Consequently, the city may not withhold the submitted information on the basis of any proprietary interests Motorola may have in the information.

We note some of the submitted information appears 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 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). Therefore, as no exceptions to disclosure are raised, the submitted information must be released, but 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, 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 395720

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Little
Motorola, Inc.
6450 Sequence Drive
San Diego, California 92121
(w/o enclosures)