



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-08543

Dear Mr. Thompson:

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# 420869.

The Corpus Christi Independent School District (the "district") received a request for the proposals and bid tabulations related to a specified request for competitive sealed proposals. You state the district has released some of the information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state that the proprietary interests of a third party might be implicated. Accordingly, you notified Trane U.S. Inc. ("Trane") of the request and of its right to submit arguments to this office explaining why its information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 applicability of exception in certain circumstances). We have received arguments submitted by Trane. We have considered its arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹We note the requestor in this case is the remaining third party whose information is at issue. Thus, the requestor has a right of access to his own company's proposal.

Code § 552.101. While Trane asserts some of the submitted information is subject to section 552.101, it has not directed our attention to any confidentiality provision that would make any of the submitted information confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the district may not withhold any portion of the submitted information under section 552.101 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.

Trane seeks to withhold information regarding its subcontractors, pricing, organizational structure, management process, and employee’s resume. Trane states it has developed a unique commercial relationship with its subcontractors over time and at great expense to Trane, and disclosing those relationships to its competitors would provide them with a competitive advantage. Trane also explains that it has developed a unique management process based on its experience in the field, and divulging this information to its competitors would allow them to offer the same level of service without incurring the same expenses that Trane has incurred. Based on these representations and our review, we find the information we have marked consists of commercial or financial information, which if released would cause substantial competitive injury to Trane. Accordingly, the district must withhold the information we have marked under section 552.110(b) of the Government Code.

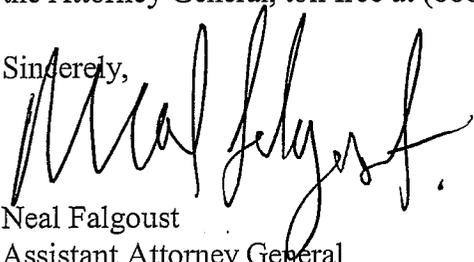
However, we find Trane has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information would cause substantial competitive harm. *See* Open Records Decision Nos. 319 at 3 (1982) (information relating to organization and personnel not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Furthermore, we note Trane was the winning bidder with respect to the contract at issue and the pricing information of a winning bidder is generally not excepted under section 552.110(b). 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* Dep’t of Justice Guide to the Freedom of Information Act 344–45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government).

In summary, the district must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 420869

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stuart Werner
District Manager, South Texas District
Trane U.S., Inc.
9535 Ball Street
San Antonio, Texas 78217
(w/o enclosures)