



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

Mr. Humberto Aguilera
For San Antonio Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
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OR2011-13484

Dear Mr. Aguilera:

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# 430331.

The San Antonio Independent School District (the "district"), which you represent, received a request for four categories of information related to the district's 2010 Bond Capital Improvements Program. You state the district will provide some information to the requestor. Although you take no position on whether the remaining requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of interested third parties.¹ Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their 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

¹The interested third parties are: AECOM Technical Services, Inc. ("AECOM"); Gallagher Construction Company, L.P., d/b/a Gallagher Construction Services ("Gallagher"); Heery International, Inc.; HR Gray in Association with Vanir Construction Management, Inc. ("Vanir"); Jones Lang La Salle; Kegley, Inc. ("Kegley"); Munoz Jacobs; Parsons Commercial Technology Group, Inc. ("Parsons"); and Project Control of Texas, Inc. ("Project Control").

comments from Gallagher, Munoz Jacobs, Parsons, and Vanir. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state that the district received the present request for information on June 9, 2011. You state the district received clarification of the request on June 21, 2011. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You inform us district offices were closed from July 4, 2011 to July 8, 2011. Thus, the district's ten-business-day deadline was July 12, 2011. However, you did not request a decision from this office until July 13, 2011. Consequently, we find the district failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the 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 withhold information, we will consider the submitted third party arguments against disclosure.

We note the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2011-04237 (2011). In this prior ruling, we ruled the district must withhold portions of AECOM's, Gallagher's, Project Control's, and Vanir's proposals under section 552.110(b) of the Government Code, as well as insurance policy numbers we indicated under section 552.136 of the Government Code. We ordered the remaining information released in accordance with copyright law. The information we ordered released in Open Records Letter No. 2011-04237 also included Parsons's proposal. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based with regard to AECOM's, Gallagher's, Heery's, Jones Lang La Salle's, Kegley's, Munoz Jacobs's, Project Control's, and Vanir's proposals, we conclude the district must rely on Open Records Letter

No. 2011-04237 as a previous determination and withhold or release AECOM's, Gallagher's, Heery's, Jones Lang La Salle's, Kegley's, Munoz Jacobs's, Project Control's, and Vanir's proposals in accordance with Open Records Letter No. 2011-04237. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In Open Records Letter No. 2011-04237, the district notified Parsons pursuant to section 552.305 when the district received the previous request for information, and Parsons failed to submit any arguments that its information was excepted under the Act. Accordingly, in our previous ruling, we ruled that the district must release Parsons's information. However, Parsons now claims that its submitted proposal is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Because the proprietary interests of a third party are at stake, we will consider Parsons's claims under these exceptions.

Parsons raises section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies, not the proprietary interests of private parties such as Parsons. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, the district did not claim an exception to disclosure under section 552.104. Therefore, the district may not withhold any of Parsons's submitted information under section 552.104 of the Government Code.

Next, Parsons claims portions of its information are excepted under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial 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." *See* Gov't Code § 552.110(a)-(b).

As mentioned above, Parsons's information was subject to a previous request for a ruling, in response to which this office issued Open Records Letter No. 2011-04237. In that prior ruling, the district notified Parsons pursuant to section 552.305, and Parsons failed to submit any arguments that its information was excepted from disclosure under the Act. Since the issuance of the previous ruling on March 28, 2011, Parsons has not disputed this office's conclusion regarding the release of its submitted proposal. We understand the district has released Parsons's proposal in accordance with that ruling. In this regard, we find Parsons has not taken the necessary measures to protect the requested proposal in order for this office to conclude that any portion of that information now either qualifies as a trade secret or contains commercial or financial information, the release of which would cause Parsons

substantial harm. *See id.* § 552.110, RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* 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), 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). Accordingly, we conclude that the district may not withhold any information in Parsons's proposal under section 552.110 of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2011-04237 as a previous determination and withhold or release the proposals pertaining to AECOM, Gallagher, Heery, Jones Lang La Salle, Kegley, Munoz Jacobs, Parsons, Project Control, and Vanir in accordance with Open Records Letter No. 2011-04237.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 430331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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