



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

Ms. Traci S. Briggs
Deputy City Attorney
City of Killeen
P.O. Box 1329
Killen, Texas 76540-1329

OR2011-13525

Dear Ms. Briggs:

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# 430345.

The City of Killeen (the "city") received a request for the proposal submitted to the city by Affion Public, LLC ("Affion") for recruiting services. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the information at issue may implicate Affion's proprietary interests. Accordingly, you provide documentation showing you have notified Affion of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

You raise section 552.110 of the Government Code, arguing that "[c]ompetitors would have a distinct advantage in knowing the intricate and technical details of Affion's process." However, because section 552.110 is designed to protect the interests of third parties, not those of governmental bodies, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 52.305(d)(2)(B). As of the

date of this ruling, we have not received comments from Affion. Thus, we have no basis to conclude Affion has a protected proprietary interest in any of the submitted information. *See id.* § 52.110(a)-(b); 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 city may not withhold any of the information at issue on the basis of any proprietary interest Affion may have in the information.

We note a portion of the submitted information is protected by copyright. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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 copyright law and the risk of a copyright infringement suit. As no exceptions to disclosure have been raised, the city must release the submitted information to the requestor, but any information that is protected by copyright may only be released 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 430345

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Scott Reilly
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Harrisburg, Pennsylvania 17101
(w/o enclosures)