



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

Judge C.H. Mills
County of Aransas
301 North Live Oak
Rockport, Texas 78382

OR2011-15170

Dear Judge Mills:

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# 433441.

Aransas County (the "county") received a request for all records pertaining to the Information Technology department's (the "department") 2012 proposed budget, detailed work sheets showing the line item amounts and details concerning the line items within the department's proposed budget, and justifications given for any increase in the department's budget for 2012.¹ You state you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.104, and 552.139 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of certain third parties. Accordingly, you provide documentation showing that you have notified the third parties of the request and their 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 received comments from a third party. We have considered the submitted arguments and reviewed the submitted information.

¹The requestor clarified his initial request for information in correspondence received by the county on August 5, 2011. *See* Gov't Code § 552.222(b); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or overbroad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Initially, we note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from one of the third parties. We, thus, have no basis for concluding that any portion of the submitted information constitutes the remaining third parties' proprietary 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. Accordingly, the county may not withhold any of the submitted information based on the proprietary interests of the non-briefing third parties

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (discussing statutory predecessor). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the submitted information relates to "competitive quotes received by the [c]ounty in order to prepare and plan the 2012 budget for the acquisition of items described in the quotes for use within [the county's] computing and network environment." Thus, we understand the county is in a competitive bidding situation. You assert that release of the information you marked would "compromise the competitiveness and give vendors an undue advantage which would cost the taxpayers more money or be used as a cause for vendors to withdraw their quotes." Based on your representations and our review, we conclude that the county has demonstrated that release of the information you marked would harm its interests in a competitive situation. Accordingly, the county may withhold the information you marked under section 552.104 of the Government Code.²

Next, the responding third party claims portions of its proposal is excepted under section 552.110(b) of the Government Code. Section 552.110(b) of the Government Code 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

²As our ruling is dispositive, we need not address your remaining arguments.

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* ORD 661 at 5-6 (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).

Upon review of the third party's arguments under section 552.110(b), we find that the third party has established that its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, the county must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find that the third party has made only conclusory allegations that the release of any of its remaining information would result in substantial damage to the company's competitive position. Thus, the third party has not demonstrated that substantial competitive injury would result from the release of any of its remaining information at issue. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, none of the third party's remaining information may be withheld under section 552.110(b).

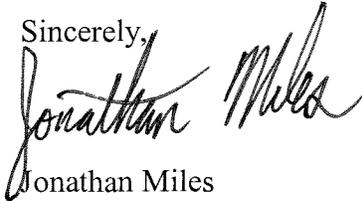
We note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 the copyright law and the risk of a copyright infringement suit.

In summary, the county may withhold the information you have marked under section 552.104 of the Government Code. The county must withhold the third party's information we have marked under section 552.110(b) of the Government Code. The remaining information must be released, but any information subject to 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 433441

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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