



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

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

OR2011-17807

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# 437715.

The City of Allen (the "city") received a request for all documents that pertain to request for proposals 2008-2-172-C.¹ You state the city has released some information to the requestor. Although you take no position as to whether the remaining requested information is excepted under the Act, you state release of the remaining requested information may implicate the proprietary interests of InterAct Public Safety ("InterAct"), Intrado, Intergraph Corporation ("Intergraph"), New World Systems ("New World"), Integrated Computer Systems, Inc. ("ICS"), Sungard Public Sector ("Sungard"), and TriTech Software Systems ("TriTech"). Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why their submitted information should not be released. *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

¹We note the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *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).

circumstances). We have received comments from InterAct and Sungard. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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. 2009-11954 (2009). In this prior ruling, we ruled, in part, that the city must withhold portions of New World's, Sungard's, and Intrado's proposals under sections 552.110, as well as insurance policy numbers we marked under section 552.136 of the Government Code and e-mail addresses we marked under section 552.137 of the Government Code.² We ordered the remaining information released in accordance with copyright law. The information we ordered released in Open Records Letter No. 2009-11954 also included some of InterAct'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 Intrado, Intergraph, New World, ICS, Sungard, and TriTech, we conclude the city must rely on Open Records Letter No. 2009-11954 as a previous determination and withhold or release Intrado's, Intergraph's, New World's, ICS's, Sungard's, and TriTech's information in accordance with Open Records Letter No. 2009-11954.³ *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. 2009-11954, the city notified InterAct pursuant to section 552.305 when the city received the previous request for information, and InterAct failed to submit any arguments that its information was excepted under the Act. Accordingly, in our previous ruling, we ruled that the city must release some of InterAct's information. However, InterAct now claims that portions of its previously released information are excepted from disclosure under section 552.110 of the Government Code. Because the proprietary interests of a third party are at stake, we will consider InterAct's claims under section 552.110.

InterAct claims portions of its previously released 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).

²Open Records Letter No. 2009-11954 addressed a proposal submitted to the city by Positron Public Safety Systems ("Positron"). We note that Intrado owns Positron, and the city, in this instance notified Intrado of the instant request for information. As such, we refer to Intrado in this opinion.

³As we are able to make this determination, we need not address Sungard's arguments against disclosure.

As mentioned above, InterAct'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 city notified InterAct pursuant to section 552.305, and InterAct failed to submit any arguments that its information was excepted from disclosure under the Act. Since the issuance of the previous ruling on August 25, 2009, InterAct has not disputed this office's conclusion regarding the release of its proposal. We understand the city has released InterAct's proposal in accordance with that ruling. In this regard, we find InterAct has not taken the necessary measures to protect its previously released information 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 InterAct 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 city may not withhold any of InterAct's previously released information under section 552.110 of the Government Code.

In summary, we conclude the city must rely on Open Records Letter No. 2009-11954 as a previous determination and withhold or release InterAct's, Intrado's, Intergraph's, New World's, ICS's, Sungard's, and TriTech's information in accordance with Open Records Letter No. 2009-11954.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 437715

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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