ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2012

Mr. W. Lee Auvenshine
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2012-00799

Dear Mr. Auvenshine:

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# 442572.

The Ellis County Purchasing Agent (the "county") received a request for the proposals submitted by Concepts to Operations ("CTO"), Trott Communications Group ("Trott"), and L.R. Kimball ("Kimball") in response to "RFP EMER-MGMT; Ellis County TX Design and Engineering of Radio System and Infrastructure." Although you make no arguments as to whether the submitted information is excepted from disclosure under the Act, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified CTO, Trott, and Kimball of the request for information and of their right to submit arguments to this office as to why the 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 raise and explain applicability of the Act in certain circumstances). We have received comments from CTO and Trott. We have considered the submitted arguments and reviewed the submitted information.

We note that 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 § 552.305(d)(2)(B). In its comments submitted to our office, CTO states it does not object to release of its information.

Further, as of the date of this letter, we have not received correspondence from Kimball. Thus, neither CTO nor Kimball has demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(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 county may not withhold the submitted information on the basis of any proprietary interests CTO or Kimball may have in the information.

Trott raises section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find Trott has only made conclusory allegations that release of its submitted information would cause the company substantial competitive injury. *See id.* Therefore, the county may not withhold any of Trott's submitted information under section 552.110(b) of the Government Code.

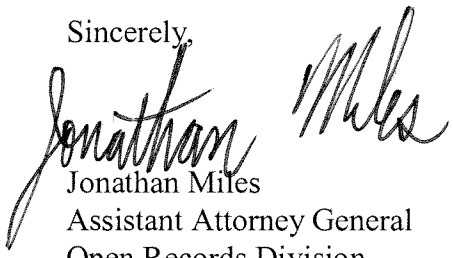
We note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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 must release the submitted information, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 442572

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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