



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2012

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2012-11248

Dear Mr. LeBlanc:

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# 459309.

The Houston Independent School District (the "district") received a request for all proposals submitted in response to request for proposals number 11-09-11 and the resulting contract and any related contract amendments. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of AVI-SPL; Data Projections, Inc. ("Data Projections"); Inventive Technologies, Inc. ("Inventive Technologies"); SAFARI Montage ("SAFARI"); and SKC. Accordingly, you have notified these third parties of the request 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) (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 comments from SAFARI. We have reviewed the submitted arguments and the submitted information.

Initially, we note you have not submitted the requested contract. To the extent information responsive to this portion of the request existed on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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). You state that SKC objects to release of its information. However, SKC has not provided comments to this office explaining why its information should not be released. Further, we have not received correspondence from AVI-SPL, Data Projections, or Inventive Technologies. Thus, AVI-SPL, Data Projections, Inventive Technologies, and SKC have not demonstrated that they have 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 district may not withhold the submitted information on the basis of any proprietary interests AVI-SPL, Data Projections, Inventive Technologies, or SKC may have in the information.

Next, we note SAFARI seeks to withhold information the district has not submitted for our review. This ruling does not address information beyond what the district has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the district has submitted as responsive to the request for information. *See id.*

We understand SAFARI to claim its submitted information is protected by section 552.110(b) of the Government Code. Section 552.110(b) exempts 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.” *Id.* § 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 SAFARI has not demonstrated how release of its submitted information would cause it substantial competitive harm, and has provided no specific factual or evidentiary showing to support such assertions. *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 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). Consequently, the district may not withhold any of SAFARI's submitted information at issue under section 552.110(b) of the Government Code.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is

collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

Finally, 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 district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released; however, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 459309

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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