



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2012

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2012-11845A

Dear Ms. Alexander:

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# 460633.

This office issued Open Records Letter No. 2012-11845 (2012) on July 30, 2012. We have examined this ruling and determined an error was made in the decision process. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Accordingly, this decision is substituted for Open Records Letter No. 2012-11845 and serves as the correct ruling.

The Texas Department of Transportation (the "department") received a request for the bid tabulation for a specified request for proposals. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of Al-Razaq Computing Services ("ACS"), Southern Computer Warehouse, Criner-Daniels & Associates, Inc., SHI-GS, Technology Asset d/b/a Global Asset, and DYKON Computer Help Center, Inc. (collectively, the "third parties"). Accordingly, you inform us you notified the third parties of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely

on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from ACS. We have considered the submitted arguments and reviewed the submitted information.

We note 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received comments ACS, but we have not received comments from any of the remaining third parties on why their submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in the submitted 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 department may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

ACS raises section 552.110(b) of the Government Code to withhold its submitted information. Section 552.110(b) 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 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.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

ACS argues release of its pricing information would give its competitors an advantage by allowing them to determine competitive pricing for future bids. Upon review, we find ACS has established release of its pricing information would result in substantial competitive harm. Accordingly, the department must withhold ACS's pricing information under section 552.110(b) of the Government Code. As no further exceptions to disclosure were raised, the remaining information must be released.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 460633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Al-Razaq Computing Services
6001 Savoy Drive, Suite 505
Houston, Texas 77036
(w/o enclosures)

Technology Asset d/b/a GlobalAsset
789 North Grove Boulevard, Suite 103
Richardson, Texas 75081
(w/o enclosures)

Southern Computer Warehouse
Building 300, Suite 106
1395 South Marietta Parkway
Marietta, Georgia 30067
(w/o enclosures)

DYKON Computer Help Center, Inc.
10700 Stancliff Road
Houston, Texas 77099
(w/o enclosures)

Criner-Daniels & Associates, Inc.
1776 Yorktown, Suite 525
Houston, Texas 77056
(w/o enclosures)

SHI-GS
1301 South Mopac Expressway, Suite 375
Austin, Texas 78746
(w/o enclosures)