



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Victoria Huynh
Deputy City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-19048

Dear Ms. Huynh:

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# 472885.

The City of Plano (the "city") received a request for hardware specifications and prices submitted by AT&T Global Business Solutions ("AT&T"), Clear Technologies ("Clear"), FlexSolv Networks ("FlexSolv"), Lumenate Technologies ("Lumenate"), and Mobius Partners ("Mobius") in response to CSP 2012-84-B; including line item details of the winning bid from Lumenate. Although we understand you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of AT&T, Clear, FlexSolv, Luminare, and Mobius. Accordingly, you notified these companies of the request and of their right to submit arguments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we note you have submitted information pertaining to Cima Solutions Group as well as information that does not pertain to hardware specifications or pricing of the named companies. This information is not responsive to the request. This ruling does not address the public availability of information that is not responsive, and the city is not required to release non-responsive information.

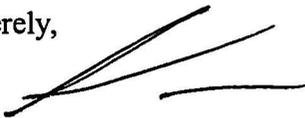
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from any of the notified third parties. Thus, none of these third parties has demonstrated 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 city may not withhold the responsive information on the basis of any proprietary interest the notified third parties may have in the information.

We note some of the responsive information is 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). However, 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. Accordingly, the submitted 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 472885

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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