



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2014

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2014-15175

Dear Mr. Junell:

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# 534567.

The Teacher Retirement System of Texas (the “system”) received a request for copies of the proposal response from CGI Technologies and Solutions Inc. (“CGI”) to the system’s request for proposal or offer, and other related contract documents. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.139 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of CGI. Accordingly, you notified CGI of the request for information and of its right to submit arguments stating why its 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 circumstances). We have received comments from CGI. We have considered the submitted arguments and reviewed the submitted information.

Initially, CGI contends a portion of its information is not responsive to the present request for information. CGI asserts its Phase Two non-binding proposal, which was included in the Phase One Statement of Work as an Exhibit, is not responsive because it was not a formal RFP response, as specified in the request, and because it was non-binding and therefore not even an informal equivalent of a RFP response. A governmental body must make a good-

faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the system has reviewed its records and determined the documents at issue are responsive to the request. Thus, we find the system has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we will determine whether the system must release the submitted information to the requestor under the Act.

You note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-01654 (2014). In that ruling, we determined the system must withhold the information at issue under section 552.139 of the Government Code. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the information is identical to the information previously requested and ruled upon by this office in the prior ruling, the system must continue to rely on Open Records Letter No. 2014-01654 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We now address the arguments for the submitted information that was not encompassed by the previous ruling.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in relevant part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state portions of the submitted information relate to the system's computer security system as well as the extent to which the system's electronically stored sensitive or critical information may be vulnerable to alteration, damage, erasure, inappropriate use, or other unauthorized access or harm. You assert the public release of this information is likely to create security risks to the system's network and associated information technology resources. Based on your representations and our review, the system must withhold the Information Security Manual you have marked under section 552.139 of the Government Code. However, the system has failed to demonstrate how the remaining links to its own website and to other external websites relate to computer network security or to the design, operation or defense of a computer network as contemplated by section 552.139(a), consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b), or relates to computer network security or restricted information under section 2059.055. Thus, none of the remaining information at issue may be withheld by the system under section 552.139 of the Government Code.

The system and CGI raise section 552.104, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). We will not address CGI's argument as section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed

and a contract has been executed. Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state the information at issue pertains to detailed pricing information related to future phases of the development of a new benefit administration system. You state the information reveals the system's position in the negotiation process, and includes payment schedules, licensing and maintenance fees, and potential evaluative information that will be used by the system during the upcoming negotiation process. You further state the information at issue would be of value to interested third parties. You explain the release of this information would adversely affect the system's negotiation position by allowing competitors to "base their bids or offers more on what they learned from the submitted information than on objective assessments of their own costs and abilities." Based on your representations and our review, we find you have demonstrated public release of the information at issue would cause specific harm to the system's interests in a competitive bidding situation. Therefore, the system may withhold the information you have marked under section 552.104 of the Government Code.

Although the system also raises section 552.110 of the Government Code, this section is designed to protect the interest of third parties, not the interests of a governmental body. Thus, we do not address the system's argument under section 552.110. However, we will address CGI's argument under section 552.110.

CGI asserts a portion of the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

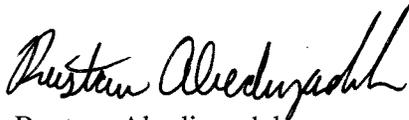
CGI raises section 552.110(b) for information regarding the expected production capabilities of specific products. CGI contends the release of specific pricing of software applications, software maintenance, and implementation has the potential to cause the company substantial competitive harm under section 552.110(b) of the Government Code. However, we note CGI has entered into a contract with the system for Phase One of the project. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, pricing information in these instances is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, none of the information at issue may be withheld under section 552.110(b) of the Government Code.

In summary, the system must continue to rely on Open Records Letter No. 2014-01654 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. The system must withhold the Information Security Manual you have marked under section 552.139 of the Government Code. The system may withhold the information you have marked under section 552.104 of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/ds

Ref: ID# 534567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: John E. Roggemann
Vice President
CGI Technologies and Solution, Inc.
111 Congress Avenue, Suite 400
Austin, Texas 78701
(w/o enclosures)