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ATTORNEY GENERAL OF TEXAS

February 10, 2016

Ms. Katherine R. Fite
Assistant General Counsel
Texas Department of Information Resources
P.O. Box 13564
Austin, Texas 78711-3564

OR2016-03261

Dear Ms. Fite:

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# 599463.

The Texas Department of Information Resources (the "department") received a request for all final technology statements of work submitted to the department by certain state agencies for specified services pursuant to a specified directive since September 1, 2015. You state the department has released some responsive information. Although you take no position as to whether the submitted information is excepted under the Act, we understand release of this information may implicate the interests of Savvy Technology Solutions, LLC ("Savvy") and the Texas Education Agency ("TEA"). Accordingly, we understand these third parties have been notified 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 §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 TEA. We have reviewed the submitted information.

Initially, we note the requestor seeks information submitted to the department since September 1, 2015. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1

(1990), 555 at 1-2(1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consist of information the department maintained or had a right of access to as of the date it received the request.

TEA has informed this office it does not object to the release of its information. Accordingly, the department may not withhold any portion of the information at issue on the basis of any interest TEA may have in it. Further, 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 not received comments from Savvy explaining why its information should not be released. Therefore, we have no basis to conclude Savvy has a protected proprietary interest 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 of the information at issue on the basis of any interest Savvy may have in it. As no exceptions to disclosure have been raised for the submitted information, it 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 599463

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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