



November 12, 2001

Ms. Lavergne Schwender
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2001-5245

Dear Ms. Schwender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154658.

Harris County (the "county") received two requests for information relating to a county purchasing department request for proposals ("RFP").¹ The county takes no position as to whether the requested information is excepted from disclosure. The county believes, however, that these requests implicate the proprietary interests of vendors who submitted proposals. You notified the interested parties of these requests and of their right to submit arguments to this office as to why their proposals should be withheld from disclosure.² One of the vendors, TransCore, notified the county that it does not object to the release of its proposal. We therefore assume that the county has released the requested information that relates to TransCore. You submitted the responses to the RFP of the other three vendors, VMS, Inc. ("VMS"), Infrastructure Corporation of America ("ICA"), and Infrastructure Services, Inc. ("ISI"). You also submitted a contract between ISI and Harris County, the purchasing agent's award recommendation letter, and the evaluation matrix and meeting

¹The first request is for all documents and information associated with the project, including all competing proposals, the final executed contract, all surety- and insurance-related documents, and information regarding negotiating procedures and the process followed in selecting the winning proposal. The second request is for copies of the proposals submitted by all other bidders, any technical evaluations or review comments generated during the proposal reviews, and the resulting contract.

²See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

notes. We have reviewed that information. We assume that you have released information pertaining to negotiating procedures and the process followed in selecting the winning proposal, to the extent such information existed when the county received these requests. If not, then the county must release that information at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

This office received correspondence from VMS. VMS asserts that certain portions of its proposal should not be released. However, VMS has not demonstrated that any information relating to VMS is excepted from disclosure under chapter 552 of the Government Code. This office received no arguments from either ICA or ISI within the time permitted by section 552.305. Thus, none of these parties has demonstrated that the county must withhold from disclosure any information relating to VMS, ICA, or ISI. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (where governmental body takes no position, attorney general will grant exception to disclosure if third party makes *prima facie* case that information qualifies as trade secret under statutory predecessor to Gov't Code § 552.110(a), and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

We note, however, that the information relating to ICA and ISI contains e-mail addresses. An e-mail address may be confidential under section 552.137, which the Seventy-seventh Legislature recently added to chapter 552 of the Government Code.³ Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137).

³House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

Thus, section 552.137 excepts from disclosure an e-mail address of a member of the public provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. We have marked e-mail addresses in ICA's and ISI's proposals that the county must withhold under section 552.137, unless the individual who submitted the e-mail address to the county has affirmatively consented to its release. The county must release the rest of the submitted information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

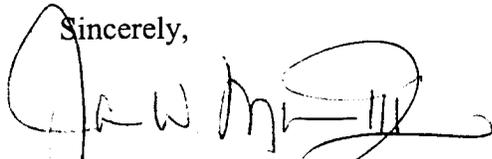
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 154658

Enc: Submitted documents

c: Ms. Adriane Y. Swinton-Hayes
Contacts Manager
Transcore
19111 Dallas Parkway, Suite 300
Dallas, Texas 75287-3106
(w/o enclosures)

Mr. Timothy Herbert
President
Infrastructure Services, Inc.
711 Rankin Road
Houston, Texas 77073
(w/o enclosures)

Mr. David Rader
Vice President of Administration
Infrastructure Corporation of America
151 Athens Way
Nashville, Tennessee 37228
(w/o enclosures)

Mr. Nicholas J. Masucci
President/CEO
VMS, Inc.
1000 Industrial Drive
Hewitt, Texas 76643
(w/o enclosures)

Mr. Bernard L. Sacks
VMS, Inc.
1510 E. Parham Road
Richmond, Virginia 23228
(w/o enclosures)