



February 12, 2002

Mr. Scott A. Kelly  
Deputy General Counsel  
Texas A&M University System  
301 Tarrow, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2002-0654

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159067.

The Texas A&M University System (the "system") received a request for a copy of a specified proposal submitted in response to RFP Mail 01-0042. The system claims that the release of the requested information may implicate the proprietary interests of an interested third party, GTE Southwest d/b/a Verizon Southwest ("GTE Verizon"). We have reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Pursuant to section 552.305(d) of the Government Code, the system was required to notify GTE Verizon of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d)*; *see also* 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 Public Information Act in certain circumstances). We note that GTE Verizon was allowed ten business days after the date of its receipt of the system's notice under section 552.305(d) to submit its reasons, if any, as to why the requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, GTE Verizon has not submitted any comments to this office explaining why the requested information should not be released.

Therefore, we have no basis to conclude that the release of the submitted information would implicate the proprietary interests of GTE Verizon. *See* Open Records Decision Nos. 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), 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law). Accordingly, we conclude that no portion of the information is excepted from disclosure pursuant to section 552.110 of the Government Code.

However, we note that some portions of GTE Verizon's bid proposal appear to be protected by copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). However, a governmental body must allow inspection of copyrighted materials, unless an exception to disclosure applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. We note that in making such copies the member of the public assumes a duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the system must allow the requestor to inspect GTE Verizon's copyrighted bid proposal materials. However, if the requestor wishes to make copies of such materials, the requestor assumes a duty of compliance with the copyright law and the risk of a copyright infringement suit.

We also note that a portion of the information may be excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

- (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.

Gov't Code § 552.137. Accordingly, under section 552.137, the system must withhold the email address that we have marked from disclosure, unless the member of the public in question has affirmatively consented to its release. The system must release the remaining information to the requestor.

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 Department 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 Texas Building and Procurement 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 159067

Enc. Marked documents

cc: Mr. Michael Pulk  
GKGroup LLC  
2700 Earl Rudder Freeway, Suite 1300  
College Station, Texas 77840  
(w/o enclosures)

Ms. Pamela Hughes  
Vice President - Branch Operations  
GTE Southwest dba Verizon Southwest  
500 East Carpenter Freeway  
Irving, Texas 75063  
(w/o enclosures)