



May 31, 2002

Mr. Martin A. Hubert
Deputy Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2002-2954

Dear Mr. Hubert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163701.

The Texas Department of Agriculture (the "department") received a request for a copy of BAE Systems' ("BAE") original proposal in response to the department's request for offers on computer system services. You state that some responsive information will be provided to the requestor. You also state that BAE has informed the department that its submitted proposal contains proprietary information that it believes to be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code.

Pursuant to section 552.305 you notified BAE of the request for information and invited that entity to submit arguments to this office as to why the information at issue should not be released.¹ BAE did not provide any arguments to this office. Therefore, we have no basis on which to conclude that the submitted information is excepted from disclosure under section 552.110. *See Gov't Code § 552.110(b)* (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); *Open Records Decision Nos. 552 at 5 (1990)* (party must establish *prima facie* case that information is trade secret), *542 at 3 (1990)*. Furthermore, although you state that BAE has additionally raised sections 552.101, 552.113, 552.131 of the Government Code, neither you nor BAE provided us with any

¹*See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in Public Information Act in certain circumstances).

independent reasons why these exceptions apply to the requested information. *See* Gov't Code § 552.301(e)(1)(A). Accordingly, we do not address these claims with regard to the requested information.

We do note that the cover page of BAE's proposal contains a confidentiality statement. However, information that is subject to disclosure under the Public Information Act may not be withheld simply because the party submitting it anticipates or requests confidentiality. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Further, it is well-settled that a governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific authority to keep the information confidential. *See* Open Records Decision Nos. 514 at 1 (1988), 476 at 1-2 (1987), 444 at 6 (1986). Consequently, the submitted information must fall within an exception to disclosure in order to be withheld from the requestor. As neither the department nor BAE has established that an exception to disclosure applies to the submitted information, we have no basis for finding the information confidential. Therefore, the submitted information must be released to the requestor in its entirety.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 163701

Enc. Submitted documents

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