



June 11, 2002

Ms. Alice Caruso
Assistant Disclosure Officer
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2002-3146

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164123.

The Texas Workforce Commission (the "commission") received four requests for the proposals submitted in response to RFP#2002-1932 (Customer Satisfaction and Training Services). You claim that the requested information may be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code. You make no arguments and take no position as to whether the submitted information is excepted from disclosure under any of those exceptions. You state, and provide documentation showing, that you notified the third parties whose proprietary interests may be implicated by the request for information.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹The third parties that were sent notice under section 552.305 are the following: Business Resources, Service Research Corporation, Alliance Training & Consulting, Service Evaluation Concepts, and International Ford Group, LLC.

As of the date of this letter, no interested third party has submitted to this office its reasons why the requested information should not be released. Consequently, no interested third party has provided this office with any basis to conclude that its responsive information is excepted from disclosure. 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). Accordingly, we find that the commission must release all of the submitted proposals to the requestor, except as indicated below.

We note that the submitted information contains e-mail addresses. Section 552.137 of the Government Code provides that “[a]n 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 [the Public Information Act].” Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the commission must withhold the e-mail addresses in the submitted information that we have marked under section 552.137.

The submitted information also contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the commission should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the commission must withhold the e-mail addresses in the submitted information that we have marked under section 552.137. Prior to releasing any social security number information, the commission should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990. The remaining submitted information must be released 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. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 164123

Enc. Submitted documents

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