



August 6, 2002

Mr. Chong H. Choe
Assistant General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2002-4305

Dear Mr. Choe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166872.

The University of North Texas System (the "system") received a request for copies of the Best and Final Offer proposals submitted by vendors and consultants that responded to two separate Requests for Proposal. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You state, and provide documentation showing, that you have notified SCT Global Education Solutions, PeopleSoft, Inc., Oracle Corporation, Ciber Enterprise Solutions, and Accenture, L.L.P., third parties whose proprietary interests have been implicated by the request, of the request for information. *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). We have considered all submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this case, you inform us that the system is currently negotiating with one bidder for each of the Requests for Proposal and that there has not been a contract executed on either Request for Proposal. You explain that "if contract negotiations are unsuccessful with the bidders that the System is currently negotiating with, the System may decide to either negotiate with one of the other bidders or solicit new proposals." You indicate that release of the submitted information would place the system at a competitive disadvantage in negotiating the contracts for these Requests for Proposal. Based on these arguments and our review of the submitted information, we conclude that the submitted information is excepted from disclosure based on section 552.104 until such time as the contract negotiations are complete and the contracts have been awarded and are in effect. As we are able to make this determination, we need not address the remaining submitted arguments.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 166872

Enc: Submitted documents

c: Mr. Steve Wallace
Account Manager
Oracle Corporation
222 West Las Colinas Boulevard, Suite 1000
Irving, Texas 75039
(w/o enclosures)

Ms. Kelly Stewart
SCT Global Education Solutions
4100 Alpha Road, Suite 900
Dallas, Texas 75244
(w/o enclosures)

Mr. Don Kirkpatrick
PeopleSoft, Inc.
15950 North Dallas Parkway, Suite 600
Dallas, Texas 75248
(w/o enclosures)

Mr. Chris Langdon
PeopleSoft, Inc.
2206 Thompson
Richmond, Texas 77469
(w/o enclosures)

Ms. Karen L. Zucker
Senior Corporate Counsel
PeopleSoft, Inc.
6903 Rockledge Drive, Suite 1100
Bethesda, Maryland 20817
(w/o enclosures)

Mr. Frank Lancione
Oracle Corporation
516 Herndon Parkway
Herndon, Virginia 20170
(w/o enclosures)

Mr. Thomas Payne
Ciber Enterprise Solutions
3556 Burch Avenue
Cincinnati, Ohio 45208
(w/o enclosures)

Mr. Charles K. Sweeney II
Senior Counsel
Ciber, Inc.
5251 DTC Parkway, Suite 1400
Greenwood, Colorado 80111
(w/o enclosures)

Mr. Bradley G. Englert
Accenture, L.L.P.
1601 South Mopac Expressway, Suite 300
Austin, Texas 78746
(w/o enclosures)