ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2004

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR2004-10028

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213526.

The Round Rock Independent School District (the "district"), which you represent, received two requests for all proposals and other information relating to Request for Proposals ("RFP") No. P03-081. The district takes no position with regard to the public availability of the requested information. You believe, however, that this request for information implicates the interests of the private parties that submitted proposals to the district. You have submitted the responsive information. You also notified the interested parties of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.[1] We received correspondence from Learning Tools International ("Learning Tools") and 4GL School Solutions, Inc. ("4GL"). We have considered all of the submitted arguments and have reviewed the submitted information.

We first note that most of the submitted information is the subject of a prior open records letter ruling. In Open Records Letter No. 2004-7261 (2004), we addressed the public availability of the responses to RFP No. P03-081 of Learning Tools; GG Consulting, LLC

[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

("GG Consulting"); Sungard Pentamation, Inc. ("Sungard"); Welligent; and 4GL. We concluded that (1) the proposals of Learning Tools, GG Consulting, Sungard, and Welligent must be released in their entirety, inasmuch as none of those parties demonstrated that any of their information is confidential or proprietary for purposes of the Act; and (2) the district must withhold some of the information in 4GL's proposal under section 552.110(a) of the Government Code and release the rest of 4GL's proposal. You have not informed this office of any change in the law, facts, and circumstances on which the prior ruling is based. Accordingly, the district must dispose of the submitted proposals of Learning Tools, GG Consulting, Sungard, Welligent, and 4GL in accordance with Open Records Letter No. 2004-7261 (2004).[2] *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) when (1) precisely same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D); (2) same governmental body previously requested and received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

We next note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have received no correspondence from Computer Automation Systems, Inc. Thus, there has been no demonstration that any of the submitted information that relates to Computer Automation Systems is confidential or proprietary for purposes of the Act. *See* Gov't Code §§ 552.101, 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the district must release all of the submitted information that relates to Computer Automation Systems.

Lastly, we note that some of the information that must be released is protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the district must dispose of the submitted information that relates to Learning Tools, GG Consulting, Sungard, Welligent, and 4GL in accordance with Open Records Letter No. 2004-7261 (2004); (2) the district must release the submitted information

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[2]As we are able to make this determination, we do not address the arguments that we received from Learning Tools.

that relates to Computer Automation Systems; and (3) in releasing copyrighted information, the district must comply with copyright law.

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 Pub. 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,

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

JWM/sdk

Ref: ID# 213526

Enc: Submitted documents

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