



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

October 26, 2005

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701

OR2005-09712

Dear Mr. Junell:

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# 234990.

The Teacher Retirement System of Texas (the "system") received a request for the telephone system maintenance contract between the system and Siemens Information and Communication Networks, Inc. ("Siemens"). The system takes no position on whether the submitted information is excepted from disclosure, but you state that release of this information may implicate the proprietary interests of Siemens. Accordingly, you inform us and provide documentation showing that you notified Siemens of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, we note that you have submitted an e-mail that was created after the request for information was submitted to the system. This e-mail, which we have marked, is thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system is not required to release that information in response to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we note that section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body's notice 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). However, as of the date of this letter, we have not received arguments from Siemens for withholding the submitted contract. Therefore, we have no basis to conclude that the release of any of the submitted contract would harm the proprietary interests of Siemens. *See* Gov't Code § 551.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 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) (party must establish *prima facie* case that information is trade secret). Accordingly, we conclude that the system may not withhold any portion of the submitted contract on the basis of any proprietary interest that Siemens may have in the contract.

Because the system does not oppose disclosure and because Siemens has failed to submit arguments that an exception to disclosure applies, we have no basis for finding that the submitted contract may be withheld. Therefore, the submitted contract 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).

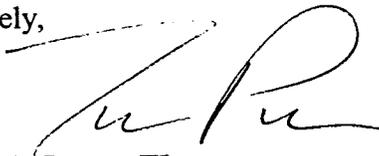
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 234990

Enc. Submitted documents

c: Mr. Dan Roberts
IPL Communications
1000 Post and Paddock, Suite 308
Grand Prairie, Texas 75050
(w/o enclosures)

Siemens Information and Communication Networks
Attn: Mr. Curtis Simmons
8850 Fallbrook
Houston, Texas 77064
(w/o enclosures)