



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2006

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
For Clint Independent School District
Falcon International Building
5219 McPherson Road, Suite 306
Laredo, Texas 78041

OR2006-14652

Dear Mr. Cruz:

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# 266968.

The Clint Independent School District (the "district") received a request for each of the *finalist's proposals for a specified contract*. You state that you have released some of the requested information. You claim that the submitted information may contain proprietary information subject to exception under the Act, but make no arguments and take no position as to whether the information is so excepted. Pursuant to section 552.305 of the Government Code, you have notified Access Administrators, Inc., American Administrative Group, Group & Pension Administrators, Inc., Fiserv Health Plan Administrators, Inc., Corporate Benefit Services of Americas, Inc., Health Administration Services ("HAS"), First Financial Capital Corp., WEB-TPA Employer Services, LLC, and TML Intergovernmental Employee Benefits Pool of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); 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 the applicability of exception to disclose under Act in certain circumstances)*. We have received correspondence on behalf of HAS. We have considered submitted arguments and reviewed the submitted information.

We initially note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Access Administrators, Inc., American Administrative Group, Group & Pension Administrators, Inc., Fiserv Health Plan Administrators, Inc., Corporate Benefit Services of Americas, Inc., First Financial Capital Corp., WEB-TPA Employer Services, LLC, and TML Intergovernmental Employee Benefits Pool have not submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to Access Administrators, Inc., American Administrative Group, Group & Pension Administrators, Inc., Fiserv Health Plan Administrators, Inc., Corporate Benefit Services of Americas, Inc., First Financial Capital Corp., WEB-TPA Employer Services, LLC, and TML Intergovernmental Employee Benefits Pool would implicate their proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 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). Accordingly, we conclude that the district may not withhold any portion of the submitted information pertaining to Access Administrators, Inc., American Administrative Group, Group & Pension Administrators, Inc., Fiserv Health Plan Administrators, Inc., Corporate Benefit Services of Americas, Inc., First Financial Capital Corp., WEB-TPA Employer Services, LLC, and TML Intergovernmental Employee Benefits Pool on the basis of any proprietary interests that these companies may have in the information.

HAS claims that portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Upon review of the submitted arguments and information, we agree that release of the client information, which we have marked, would result in significant competitive harm to HAS's interests for purposes of section 552.110(b). We also conclude that the district must withhold HAS's pricing information, which we have marked, under section 552.110(b). However, HAS has failed to provide specific factual evidence substantiating its claims that release of any of the remaining information would result in significant competitive harm. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under

commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Thus, none of the remaining information may be withheld pursuant to section 552.110(b).

We note that the submitted information contains account and insurance policy numbers. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov’t Code § 552.136. Accordingly, the district must withhold the account and insurance policy numbers that we have marked under section 552.136 of the Government Code.

Finally, we note that a portion of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990).

In summary, the district may withhold the information we have marked pursuant to section 552.110 of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code. The district must release the remaining submitted information to the requestor. However, in releasing information that is protected by copyright, 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.

¹This office will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

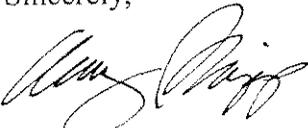
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jww

Ref: ID# 266968

Enc. Submitted documents

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