



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2006

Ms. Cynthia Villarreal-Reyna
Section Chief
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2006-04641

Dear Mr. Villarreal-Reyna:

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# 248264.

The Texas Department of Insurance (the "department") received a request for a copy of the Northrop Grumman contract and amendments associated with the Outsourced Mainframe Services project. You state that you have released some information to the requestor. Although you make no arguments and take no position as to whether the remaining requested information is excepted from disclosure, you indicate that this information may be subject to Northrop Grumman's proprietary interests. Accordingly, you state that pursuant to section 552.305 of the Government Code, you notified Northrop Grumman of the request and of its opportunity to submit comments to this office. 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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). Northrop Grumman provided this office with comments asserting

portions of the requested information are excepted from disclosure pursuant to section 552.110 of the Government Code. We have considered the submitted arguments and have reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department has not complied with the statutory deadlines prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). Because third party interests can provide compelling reasons to withhold information, we will consider whether any of the submitted information must be withheld to protect the interests of Northrop Grumman.

Northrop Grumman asserts that specific portions of the information at issue related to pricing are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[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.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999).

Having considered Northrop Grumman's submitted comments and reviewed the information at issue, we find Northrop Grumman has made only conclusory allegations that release of the pricing information at issue would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support these allegations. *See* Open Records Decision Nos. 661 at 5-6 (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), 319 at 3 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Moreover, the pricing information of a winning bidder is generally not excepted under section 552.110(b) and this office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government

contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, no portion of the information at issue may be withheld pursuant to section 552.110(b) and the requested 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, 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eb

Ref: ID# 248264

Enc. Submitted documents

c: Mr. Mike Reitz
EDS - US Government Solutions
5340 Legacy Drive
A3-1D-21
Plano, Texas 75024
(w/o enclosures)

Mr. Brian Tulga
Northrop Grumman
7745 Chevy Chase Drive, Building V, Suite 100
Austin, Texas 78752-1508
(w/o enclosures)