



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Ms. Emily D. Newhouse
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2006-12863

Dear Ms. Newhouse:

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# 263200.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request for any consulting agreements, contracts, billing information, payment information, proposals or solicitations involving the district and a named individual or company.¹ Although you take no position with respect to the submitted information, you claim that the submitted information may contain the proprietary information of a third party. Pursuant to section 552.305 of the Government Code, you state you have notified the third party, Valley Risk Consultants, Inc., of the request and of their right to submit arguments to this office as to why the information should not be released. *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 applicability of exception to disclosure under Act in certain circumstances). We have also considered comments submitted by the requestor. *See Gov't Code § 552.304*

¹ We note that the request at issue requests four categories of documents. You have only submitted a proposal responsive to the fourth part of the request. To the extent any information responsive to the remaining three categories existed on the date the district received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

(providing that interested party may submit comments stating why information should or should not be released).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Valley Risk Consultants has not submitted to this office any reasons explaining why its proposal should not be released. We thus have no basis for concluding that any portion of the proposal constitutes the proprietary information of that company. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3 (1990). Accordingly, the district must release the submitted proposal 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).

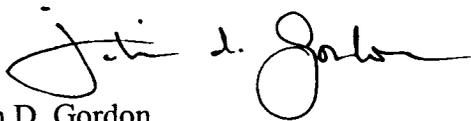
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 263200

Enc. Submitted documents

c: Mr. Roger Garza, President
Valley Risk Consultants, Inc.
1200 Fresno
McAllen, Texas 78502
(w/o enclosures)

Roger Hughes
Adams & Hughes, L.L.P.
P.O. Drawer 1429
Haringen, Texas 78551
(w/o enclosures)