



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2007

Ms. Julie Joe  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2007-06434

Dear Ms. Joe:

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# 279787.

The Travis County Purchasing Office (the "county") received a request for copies of responses to RFP# P050080-LC, Customer Flow Management System, submitted by ACF Technologies, Inc. ("ACF") and Q-Matic Corporation ("Q-Matic"). You do not take a position as to whether the submitted information is excepted under the Act; however, you state, and provide documentation showing, that you notified ACF and Q-Matic of the county's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. We have reviewed the submitted information.

We initially note, and you acknowledge, that the county failed to meet its obligations under section 552.301 of the Government Code. *See* Gov't Code 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *Open Records Decision No. 319* (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *Open Records Decision No. 150* (1977). Therefore, we will address whether the submitted information must be withheld to protect the interests of the third parties.

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, ACF and Q-Matic have not submitted to this office any reasons explaining why the information responsive to the request should not be released. Thus, we have no basis for concluding that any portion of the submitted information constitutes proprietary information of any of these companies, and the county may not withhold any portion of the submitted information on that basis. *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, we conclude that none of the submitted responsive information may be withheld based on the proprietary interests of any of the third parties. As no other arguments have been submitted, the requested information must be released to the requestor.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eeg

Ref: ID# 279787

Enc. Submitted documents

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