



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2008

Ms. Cheryl T. Mehl
Schwartz & Eichelbaum
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2008-07886

Dear Ms. Mehl:

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# 312707.

The Godley Independent School District (the "district"), which you represent, received a request for bid summaries, evaluations and proposal submissions for all competitors for VoIP service. Although the district takes no position on the release of the submitted information, you explain that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the district notified Flair Data Systems, Inc. ("Flair") and Allcom Solutions ("Allcom") of this request for information 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

We note that 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Flair nor Allcom have submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Therefore, Flair and Allcom have not provided us with any basis to conclude that they have a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial

or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the submitted information may not be withheld on this basis, and it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

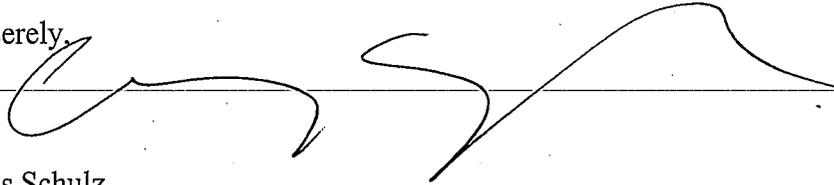
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 312707

Enc. Submitted documents

c: Ms. Barbara Santos
Sales and Marketing Operations Manager
9208 Waterford Centre Boulevard, Suite 150
Austin, Texas 78746
(w/o enclosures)

Mr. Kalon Parmon
Flair Data Systems, Inc.
2805 North Dallas Parkway, Suite 240
Plano, Texas 75093
(w/o enclosures)

Mr. Mike Morrow
Alcom Solutions
14285 Midway Road, Suite 340
Addison, Texas 75001
(w/o enclosures)