ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2008

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2008-08175

Dear Ms. Constantine:

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# 313417.

The Dallas-Fort Worth International Airport (the "airport") received a request for a copy of a specified bid proposal and pricing. You state that the airport is releasing portions of the bid proposal. The airport takes no position on whether the remaining portions of the proposal are excepted from disclosure, but states that release of this information may implicate the proprietary interests of 3N - National Notification Network ("3N"). Accordingly, you inform us, and provide documentation showing, that you notified 3N of the request and of its right to submit arguments to this office as to why its 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 considered 3N's arguments and reviewed the submitted information.

3N asserts that specific pages of its proposal to provide an emergency notification system for the airport are subject to 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. *Id.* § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton,* 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Although 3N identifies the specific pages it considers proprietary, it provides no arguments explaining how the release of this information would cause the company substantial competitive harm. Accordingly, 3N has failed to demonstrate the applicability of section 552.110(b) to the identified pages of its proposal. *See* Open Record Decision Nos. 661 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm), 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 (information relating to organization, personnel, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110).

We note that some of the submitted information appears to be 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). Therefore, the submitted information must be released, but only in accordance 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 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

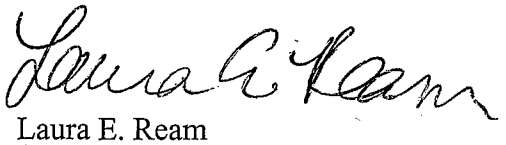
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/mcf

Ref: ID# 313417

Enc. Submitted documents

c: Mr. John Rodkey
c/o Ms. Anne M. Constantine
Legal Counsel
Dallas/Ft. Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428
(w/o enclosures)

Mr. Mark Bell
Vice President of Global Sales
3n National Notification Network
505 N Brand Boulevard, Suite700
Glendale, California 91203
(w/o enclosures)