



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2009

Ms. Margo M. Kaiser
Staff Attorney
Open Records Unit
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2009-00952

Dear Ms. Kaiser:

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# 333021 (TWC Tracking No.: 081029-26).

The Texas Workforce Commission (the "commission") received a request for the proposals submitted by Northrop Grumman ("Northrop") and Lockheed Martin Integrated Systems, Inc. ("Lockheed"), the technical and financial scoring, and final recommendation for a specified contract. Although the commission takes no position on whether the submitted proposals are excepted from disclosure, you state that release may implicate the proprietary rights of Northrop and Lockheed. Accordingly, you notified Northrop and Lockheed of the request and of their right to submit arguments to this office as to why the proposals should not be released to the requestor. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances).

Initially, we note that you have not submitted the technical and financial scoring or the final recommendation. To the extent this information existed on the date the commission received the request, we assume you have released it. If you have not released this information, 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).

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, we have not received any arguments from Northrop or Lockheed. We thus have no basis for concluding that any portion of the submitted proposals constitute proprietary information. *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).

We note, however, that some of the submitted information is 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). The submitted information must be released, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 333021

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William M. Castonguay
Lockheed Martin Integrated Systems, Inc.
6801 Rockledge Drive
Bethesda, Maryland 20817
(w/o enclosures)

Mr. Tommy Johnson
Northrop Gumman Information Technology
7745 Chevy Chase Drive, Building 5, Suite 100
Austin, Texas 78752
(w/o enclosures)