



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 28, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-01122

Dear Ms. Byles:

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# 333258 (Fort Worth Public Information Request No. 0493-09).

The City of Fort Worth (the "city") received a request for a "copy of the most recent Professional Services Contract for Environmental Laboratory Analysis with pricing between the Provider and the Environmental Management Department". You take no position on whether the submitted information is excepted from disclosure, but inform us, and provide documentation showing, that you notified Accutest Laboratories ("Accutest") 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). Accutest has submitted comments to our office. We have considered the arguments raised by Accutest and reviewed the submitted information.

We understand Accutest to assert that the pricing information in the submitted information is 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).

In this instance, Accutest informs us that while most of the submitted information is in the public domain, its pricing information should be excepted from disclosure under section 552.110(b). However, we note that the pricing information of a company contracting with a governmental body is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Therefore, we find that Accutest has not established by specific factual evidence that release of the information at issue would cause it substantial competitive harm in order to be excepted from disclosure under section 552.110 of the Government Code. *See* Open Records 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 and personnel, market studies, professional references, qualifications and experience, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). None of the submitted information may be withheld on that basis, and must instead be released to the requestor.

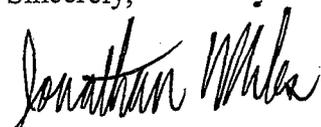
We note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection 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).

In summary, the city must release the submitted information to the requestor, but any information protected by copyright must 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 333258

Enc. Submitted documents

c: Requestor
(w/o enclosures)