



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2009

Mr. Phillip C. Bowen
1790 Lee Trevino, Suite 520
El Paso, Texas 79936

OR2009-01163

Dear Mr. Bowen:

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# 333524.

The El Paso County 9-1-1 Emergency Communications District (the "district"), which you represent, received a request for "the Positron Direct RFP and Pricing that was submitted in response to the CAD RFP." Although the district takes no position with respect to the public availability of the requested information, you notified Positron Public Safety Systems ("Positron"), the interested third party, of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.¹

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

¹We note that the materials submitted to this office contained a request for information related to the CAD RFP. The district has not requested a ruling on this second request, nor submitted any documents responsive to the second request. *See* Gov't Code § 552.301(b), (e). Although a representative of this office telephoned you regarding the second request on January 8, 2009 and again on January 14, 2009, you failed to respond. This ruling does not address information that was not submitted by the district and is limited to the information submitted as responsive by the district. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

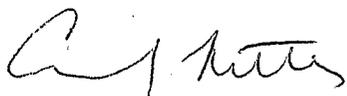
information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Positron has not submitted to this office any reasons explaining why its submitted information should not be released. Therefore, this company has failed to provide us with any basis to conclude that it has a protected proprietary interest in any of the submitted 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. Accordingly, we conclude that the district may not withhold any portion of the submitted information on the basis of any proprietary interest Positron may have in the information.

We note that some of the materials at issue appear 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 protected by copyright. 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 materials protected by copyright, 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). Thus, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 333524

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Phillip R. Rotheram
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(w/o enclosures)