



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Mr. David M. Swope
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2009-01671

Dear Mr. Swope:

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# 334344 (C.A. File No. 08GEN2020).

The Harris County Purchasing Agent (the "county") received a request for proposals submitted in response to a specified Request for Proposals ("RFP"). You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.110 and 552.136 of the Government Code. You also state, and provide documentation showing, that you notified Gimmel Group ("Gimmel"), Iron Mountain Information Management ("Iron Mountain"), and Sogeti USA, LLC ("Sogeti") of the request and of their 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 at 3 (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). The county received comments from Gimmel, which were provided to this office. We have considered the submitted arguments and reviewed the submitted information.

The county claims that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 262.030 of the Local Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 262.030(c) of the Local Government Code provides a competitive proposal procedure for the purchase of high technology items by a county, and states in pertinent part:

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

Local Gov't Code § 262.030(c). In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of section 262.030(c) does not expressly make bid proposals confidential. Section 262.030(c) only requires a governmental body to take adequate precautions to protect bid proposals from competing bidders. Accordingly, we determine that the information at issue is not confidential pursuant to section 262.030(c). Thus, the county may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 262.030 of the Local Government Code.

Next, 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Iron Mountain nor Sogeti have submitted to this office any reasons explaining why their information should not be released. On behalf of Gimmel, Iron Mountain, and Sogeti, however, you assert that portions of the submitted information may be excepted under section 552.110 of the Government Code. Although you assert that the submitted information is excepted under section 552.110 of the Government Code, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because we have received no arguments raising section 552.110 from Gimmel, Iron Mountain or Sogeti, the county may not withhold any of the submitted information under section 552.110 of the Government Code.

Next, we note that Gimmel asserts that portions of its bid proposal are "company confidential." Further, the county notes that portions of Iron Mountain's and Sogeti's

proposals are marked "proprietary and confidential" and "confidential and proprietary," respectively. Information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the submitted bid proposals come within an exception to disclosure, they must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. You state the submitted information contains bank account and routing numbers. Upon review, we find no portion of the submitted information contains bank account or routing numbers. Further, you have failed to explain how any of the submitted information constitutes access device numbers for purposes of section 552.136. Accordingly, none of the submitted information may be withheld on this basis.

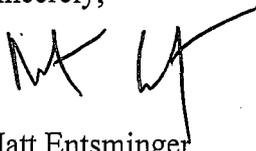
We note that portions of the submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection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



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 334344

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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