



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2009-02728

Dear Ms. Yancey:

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# 336055.

The Denton County Clerk (the "county") received a request for all bid proposals submitted in response to request for proposals number 10-07-1860 for the collection of delinquent court fines, and all contracts between the county and vendors regarding the collection of delinquent court fines. You claim the submitted bid proposals and request for proposals are excepted from disclosure under section 552.101 of the Government Code. Furthermore, because release of the requested information may implicate the proprietary interests of third parties, the county was required by section 552.305 of the Government Code to notify the companies whose information is at issue of the request and of each company's opportunity to submit comments to this office explaining why the requested information should be withheld from disclosure. *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). We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested contract information. To the extent information responsive to this aspect of the request existed on the date the county received this request, we assume you have released it. If you have not released any such records, 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).

Next, we note the request is for only the bid proposals and contracts pertaining to the collection of delinquent court fines. Thus, the submitted request for proposals, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

The county claims the submitted bid proposals are 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) 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. Accordingly, we determine the submitted information 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.

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 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 letter, we have not received comments from any of the interested third parties explaining why the submitted bid proposal information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; 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

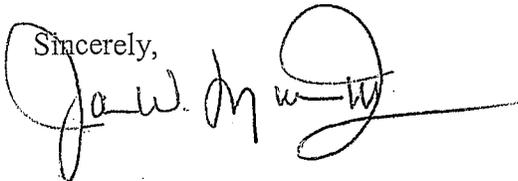
is trade secret), 542 at 3 (1990). Consequently, the submitted information may not be withheld based on proprietary interests any of the interested third parties may have in it.

We note a portion of one of the submitted bid proposals 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). Accordingly, as no other exceptions to disclosure have been raised, the submitted bid proposal with copyrighted information must be released to the requestor in accordance with copyright law. The remaining bid proposals must also be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 336055

Enc. Submitted documents

cc: Requestor
(w/o enclosures)