



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2009

Ms. Shreya Shah
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-05764

Dear Ms. Shah:

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# 341603 (COSA ID# 09-0079).

The City of San Antonio (the "city") received a request for four categories of information pertaining to the city's Head Start program. You state that information responsive to three categories has been released to the requestor. Although the city takes no position as to the disclosure of the submitted documents, which pertain to Parent Child Incorporated, Inc. ("PCI"), you state that release of this information may implicate the proprietary interests of PCI. Accordingly, you state, and provide documentation showing, that the city notified PCI of the request and of its opportunity to submit comments to this office as to why its requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

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 arguments from PCI. We thus have no basis for concluding that any portion of the submitted information

constitutes PCI's 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). Accordingly, the city may not withhold any portion of the submitted information based on PCI's proprietary interests.

We note, however, that the submitted documents contain personal e-mail addresses that are subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

We also note that it appears some of the submitted documents 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 copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection 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, to the extent the city has not received consent for their release, the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code. The remaining information must be released, but any copyrighted information 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 341603

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sharon Small
Chief Executive Officer
Parent/Child Incorporated
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San Antonio, Texas 78207-7936
(w/o enclosures)