



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2009

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2009-08508

Dear Ms. Grace:

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# 346622 (TM#44360).

The City of Austin (the "city") received a request for the following information pertaining to five specified RFPs: (1) the date the city issued each RFP; (2) the names of the entities that responded to the RFPs; (3) the amount each responding entity bid for each RFP; (4) the responding entities' cities of origin; (5) the number of notifications the city sent for each RFP; and (6) the number of notifications sent to Texas based entities. You state the city has released some of the requested information. You also state that the requestor is satisfied with the information or response you provided pertaining to Cingex Technologies, Inc. ("Cignex"), and therefore the city is withdrawing the portion of its request for a ruling that pertains to Cignex.¹ Although you take no position on the remaining requested information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the city notified Advarion, Inc. ("Advarion") and Milkshake Media, L.P. ("Milkshake") of the request for information 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

¹We note that, as a result of the city's partial withdrawal, the submitted information pertaining to Cignex is not responsive to the present request for information. The city need not release nonresponsive information in response to this request, and this ruling will not address it.

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 received comments from Milkshake. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, that most of submitted information is not responsive to the instant request because it does not pertain to: (1) the date the city issued each RFP; (2) the names of the entities that responded to the RFPs; (3) the amount each responding entity bid for each RFP; (4) the responding entities' cities of origin; (5) the number of notifications the city sent for each RFP; and (6) the number of notifications sent to Texas based entities. The city need not release nonresponsive information in response to this request and this ruling will not address that information.²

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 Advarion explaining why its submitted proposals should not be released. Therefore, we have no basis to conclude Advarion has a protected proprietary interest in its responsive 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. Accordingly, the city may not withhold Advarion's responsive information on the basis of any proprietary interest it may have in the information.

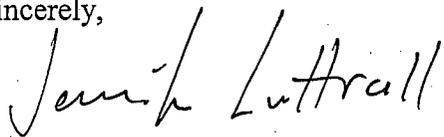
We note portions of the responsive information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted 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). As no exceptions have been raised for the responsive information, it must be released to the requestor, but any information subject to copyright must be released in accordance with copyright law.

²As we are able to make this determination, we do not address Milkshake's arguments against disclosure of its financial statements.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 346622

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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