



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-12539

Dear Ms. De La Garza:

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# 354570.

The City of Houston (the "city") received requests from two requestors for information relating to a specified request for proposals, including proposals, pricing, and supporting documents submitted by the successful bidder and the resulting contract. Although you take no position on the public availability of the requested information, you believe that the submitted technical and cost proposal may implicate the interests of Tiburon, Inc. ("Tiburon"). You inform us that Tiburon was notified under section 552.305 of the Government Code of its right to submit arguments to this office as to why its proposal should not be released.¹ We have reviewed the submitted information. Because you have not submitted the requested contract, we assume that the city has released any information that is responsive to that aspect of these requests, to the extent that such information existed when the city received the requests. If not, then any such information must be released

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We first note, and you acknowledge, that the city did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(a)-(b), (e). The submitted information is therefore presumed to be public under section 552.302 of the Government Code and must be released, unless there is a compelling reason to withhold any of the information. See *id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the city must withhold any of the submitted information to protect Tiburon's interests.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the interested party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Tiburon. Therefore, because Tiburon has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the city may not withhold any of the information on that basis. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. See Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

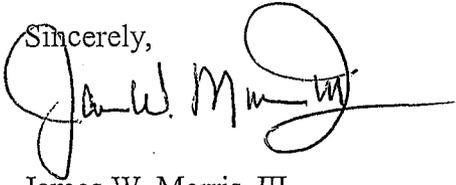
In summary, the city must release the submitted information in its entirety, but any information that is protected by copyright may only be released in accordance with copyright law.

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

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

JWM/cc

Ref: ID# 354570

Enc: Submitted documents

c: Requestors
(w/o enclosures)

Mr. Bradley Wiggins
Tiburon, Inc.
6200 Stoneridge Mall Road Suite 400
Pleasanton, California 94588
(w/o enclosures)