



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2009

Ms. Ashley Wilson  
Strasburger & Price, LLP  
Attorneys for Dallas County Schools  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2009-15526

Dear Ms. Wilson:

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# 360146.

Dallas County Schools ("DCS"), which you represent, received two requests from the same requestor for (1) any contracts executed by DCS relating to the monitoring of buses with electronic equipment and (2) the proposals submitted to DCS in response to a specified RFP. Although you take no position with respect to the public availability of the submitted information, you indicate you have notified interested third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> 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 considered comments from Seon Design and 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 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, only Seon Design has submitted to this

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<sup>1</sup>The third parties are: ONGO Live; Trapeze Software Group, Inc.; Gatekeeper Systems, Inc.; Everyday Solutions; 247 Security, Inc.; Angel Trax; AT&T; Safety Vision; Won Technologies, Inc.; TCB Surveillance; Adcomp Systems, Inc.; Radio Engineering Industries; Zepco Sales & Service; and Seon Design, Inc. ("Seon Design").

office reasons explaining why its information should not be released. Therefore, the remaining third parties have provided us with no basis to conclude that they have protected proprietary interests in any of the submitted 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). Therefore, DCS may not withhold any portion of the submitted information on the basis of any proprietary interest that the remaining third parties may have in this information.

Next, we note Seon Design submitted arguments to this office regarding information DCS did not submit for our review. This ruling does not address such information, and is limited to the information submitted as responsive to the request by DCS. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Seon Design claims portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999).

Having considered the submitted arguments and reviewed the information at issue, we conclude Seon Design has established the release of its pricing information and portions of its customer information would cause it substantial competitive injury; therefore, DCS must withhold this information, which we have marked, under section 552.110(b). We note, however, some of the customers Seon Design seeks to withhold appear in testimonials on Seon Design's website. We find that Seon Design has not established that this customer information is excepted from disclosure under section 552.110(b). Further, we note that information pertaining to employee rosters and qualifications is not typically excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 319 (1982) (finding information relating to organization and personnel, market studies, professional references, qualifications, and experience not ordinarily excepted under section 552.110). Therefore, we find that Seon Design has not made the specific factual or evidentiary showing required by section 552.110(b) establishing that the release of any of the remaining information would cause the company substantial competitive harm. Thus, DCS may not withhold any of the remaining information under section 552.110 of the Government Code.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 states that “[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. This office has determined that insurance policy numbers constitute access device numbers for purposes of section 552.136. Therefore, DCS must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the remaining information is 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).

In summary, DCS must withhold the information we marked under section 552.110(b) of the Government Code and section 552.136 of the Government Code. The remaining information must be released, but only 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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

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<sup>2</sup>The 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).

Ref: ID# 360146

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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