



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2009

Ms. Rosa Miranda Baker
Records Management Officer
Tyler Independent School District
P.O. Box 2035
Tyler, Texas 75710

OR2009-16317

Dear Ms. Baker:

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# 361662.

Tyler Independent School District (the "district") received a request for documents relating to the district's integrated security system for specified schools, including "all bids and purchase orders pertaining to the selection and purchase of [the district's] IP Video Management System." The district states it takes no position with respect to a portion of the submitted documents. The district also states it does not have any purchase orders responsive to the request.¹ You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state that the release of the submitted information may implicate the proprietary interests of third parties Henry Bros. Electronics, Inc., East Texas Alarm, and Texas School Safety Center. Accordingly, you state that you notified the third parties of this request for information and of their right to submit arguments to this office as to why the information should not be released. *See id.* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *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), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that you have submitted information that does not pertain to the specified schools. Accordingly, this information, which we have marked, is not responsive to the present request. The district need not release non-responsive information in response to this request, and this ruling will not address it.

Next, we note 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 third parties explaining why the information at issue should not be released. Thus, we have no basis for concluding that any portion of the submitted information constitutes the proprietary information of these third parties, and none of it may be withheld on that basis. *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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may generally be related to a risk or vulnerability assessment, critical infrastructure, or a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain that the information in Tabs 1-5 "provide[s] detailed specifications of the security equipment that is being installed to prevent and protect against acts of criminal activity and/or terrorism at the requested district campuses." You contend that with the information in Tabs 1-5, "an individual can know what kind of equipment these district campuses have, what kind of systems exist in the district, and then figure out how to disarm such systems and bypass security to commit acts of violence and/or terrorism." Having

considered your arguments and reviewed the submitted information, we agree that the information in Tabs 1-5 is confidential under section 418.182(a) of the Government Code. We also find that the additional information that we have marked is confidential under section 418.182(a). Therefore, the district must withhold the marked information under section 552.101 of the Government Code.²

We note that some of the remaining information may 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).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The remaining 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 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

²As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

Ref: ID# 361662

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Sean Finegan
Account Executive
Henry Bros. Electronics, Inc.
8416 Sterling
Irving, Texas 75063
(w/o enclosures)

Mr. Gary Hodge
East Texas Alarm
315 South Vine
Tyler, Texas 75701
(w/o enclosures)

Mr. David H. Williams
Texas School Safety Center
350 North Guadalupe, Suite 140
San Marcos, Texas 78666
(w/o enclosures)