



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

Mr. James G. Nolan
Open Records Attorney
Open Government Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2009-16736

Dear Mr. Nolan:

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#362527.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for copies of proposals submitted for RFO No. 304-9-FM1 (Texas Fleet Management System) excluding the winning bid proposal. You state that you are releasing a portion of the of the requested information. You state that releasing the submitted information may implicate the interests of third parties. Accordingly, you have notified Total Resource Management; Krasnet Consulting, Inc.; InCircuit Development Corporation; AssetWorks, Inc.; and ResQSoft, Inc. of the request and of their opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure 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

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, none of the third parties you notified have submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the notified third parties' proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the comptroller may not withhold any portion of the submitted information based on the proprietary interests of Total Resource Management; Krasnet Consulting, Inc.; InCircuit Development Corporation; AssetWorks, Inc.; and ResQSoft, Inc.

We note that although ResQSoft, Inc. did not submit arguments to this office, its proposal indicates that ResQSoft, Inc. asserts its pricing information is excepted from disclosure under section 552.104. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, section 552.104 only protects the interests of a governmental body and is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). In this instance, the comptroller has not argued that the release of any portion of the submitted information would harm its interests in a particular competitive situation under section 552.104. Because the comptroller has not submitted any arguments under section 552.104, we conclude that the comptroller may not withhold any portion of the submitted information under section 552.104 of the Government Code.

We note that the submitted information contains Texas motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The comptroller must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

We note, and you acknowledge, that a portion of the submitted 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 protected by copyright. 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 materials protected by copyright, 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 comptroller must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.¹

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 362527

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Guy Griffin
Total Resource Management
510 King Street, Suite 300
Alexandria, Virginia 22314
(w/o enclosures)

Mr. Dean Hebert
InCircuit Development Corp.
5000 Plaza On the Lake, #315
Austin, Texas 78746
(w/o enclosures)

¹We note that you have marked a social security number contained in the remaining information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Mr. Jeff Brock
AssetWorks, Inc.
998 Old Eagle School Road
Wayne, Pennsylvania 19087
(w/o enclosures)

Mr. Thomas W. Bragg
ResQSoft, Inc.
P.O. Box 5015
Vienna, Virginia 22182
(w/o enclosures)

Mr. Ivan Fomin
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115 South Wild Basin Road, Suite #306
Austin, Texas 78746
(w/o enclosures)