



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Ms. Rachel Luna
General Counsel
Southwest Key Programs, Inc.
6002 Jain Lane
Austin, Texas 78721

OR2009-17506

Dear Ms. Luna:

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# 363976.

Southwest Key Programs, Inc. ("Southwest Key") received a request for (1) a copy of the agreement that created the Day Treatment School between Austin Independent School District (the "district"), Travis County (the "county"), and Southwest Key and (2) copies of any documents specifically providing, defining, and/or mandating the respective responsibilities of the district, the county, and Southwest Key in conducting the Day Treatment School.¹ You state that you are releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.110 of the Government Code. You also state that Southwest Key believes the submitted information may involve the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, Southwest Key has notified the interested third party, the county, of the request and of its right to submit arguments to this office explaining why this information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to

¹You state Southwest Key sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

submit to attorney general reasons why requested information should not be released); *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 applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note that 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 the county explaining why their submitted information should not be released. Therefore, we have no basis to conclude that the county has a protected proprietary interest in the submitted 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, Southwest Key may not withhold any portion of the submitted information based upon the proprietary interests of the county.

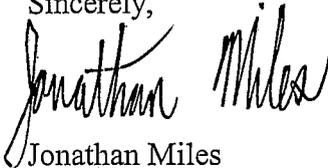
Southwest Key asserts that some of the submitted information is excepted under section 552.110 of the Government Code. However, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. *See Gov't Code* § 552.110. Thus, we do not address Southwest Key's arguments under section 552.110 for the submitted information.

We note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See Attorney General Opinion JM-672* (1987). Thus, 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 you raise no further exceptions against disclosure, Southwest Key must release the submitted information, but any information that is protected by copyright may only 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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 363976

Enc. Submitted documents

c: Requestor
(w/o enclosures)