



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2010

Mr. Michael G. Young
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-15025

Dear Mr. Young:

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# 395582 (DSHS RFI #537-10-76448)

The Health and Human Services Commission (the "commission") received a request for copies of responses to the RFI for a new WIC system that were submitted by vendors other than the requestor.¹ You take no position on the public availability of the submitted information. You state release of this information may implicate the proprietary interests of iBridge Group, Inc. ("iBridge") and Sierra Systems, Inc. ("Sierra"). Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 reviewed the submitted information.

We note 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 third party should not be released.

¹You explain the commission is the administrative agency for the Texas Department of State Health Services (the "department") and the commission handled the RFI at issue, which was a procurement for the department. You inform us the commission received the open requests request at issue and forwarded the request to the department for handling.

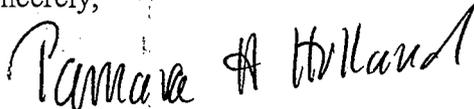
See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, iBridge and Sierra have not submitted comments to this office explaining why any portion of their submitted information should not be released to the requestor. Therefore, we have no basis to conclude that the release of any portion of the submitted information relating to these companies would implicate their 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 commission may not withhold any portion of iBridge or Sierra's information on the basis of any proprietary interests that they may have in the information.

Finally, we note that some 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 copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. Therefore, the submitted information must be released, but any information protected by copyright 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 395582

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Tim Lindstrom
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Austin, Texas 78731
(w/o enclosures)

Mr. John Galloway
Sierra Systems, Inc.
4801 Southwest Parkway, Parkway 31, S115
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(w/o enclosures)