



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Ms. Catherine Zellers
City Attorney's Office
City of Weatherford
P.O. Box 255
Weatherford, Texas 76086

OR2011-08786

Dear Ms. Zellers:

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# 421473.

The City of Weatherford (the "city") received a request for specified presentation materials and preliminary study results submitted by energy services companies and other types of companies. Although you indicate the city takes no position with respect to the public availability of the submitted presentation materials and preliminary study results, you state their release may implicate third parties' proprietary interests. Accordingly, you state the city notified Johnson Controls, Inc. ("JCI") and Schneider Electric of the request and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining 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 received comments from JCI. We have considered the submitted arguments 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, we have not received comments from Schneider Electric explaining why its submitted information should not be released. Therefore, we have no basis to conclude Schneider Electric has protected proprietary interests in its 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. Consequently, the

city may not withhold any of Schneider Electric's information on the basis of any proprietary interests Schneider Electric may have in the information.

JCI indicates its submitted information is confidential because JCI specifically labeled the information as confidential prior to submitting the information to the city. Information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672* (1987); *Open Records Decision Nos. 541 at 3* (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), *203 at 1* (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 of the Government Code). Consequently, unless JCI's information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

JCI claims its submitted information is excepted from disclosure under section 552.110(b) of the Government Code, which protects “[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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *Open Records Decision No. 661 at 5-6* (1999).

JCI argues its information constitutes commercial and financial information that, if released, would cause the company substantial competitive harm. Upon review, however, we find JCI has made only general conclusory assertions that release of its information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See generally Open Records Decision Nos. 661, 509 at 5* (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), *319 at 3* (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the city may not withhold JCI's submitted information under section 552.110(b) of the Government Code.

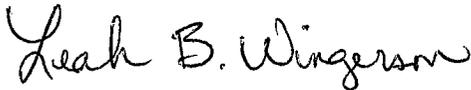
We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3* (1977). A governmental body must allow inspection of copyrighted 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. Accordingly, the city must release the submitted information, but any of the 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 421473

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. George Knudson
Schneider Electric
1650 West Crosby Road
Carrollton, Texas 75006
(w/o enclosures)

Ms. Tracey Walker Blackwell
For Johnson Controls, Inc.
Gonzalez, Saggio & Harlan, L.L.P.
3353 Peachtree Road N.E., Suite 920
Atlanta, Georgia 30326
(w/o enclosures)