



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2012

Mr. Stephen A. Cumbie  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2012-19910

Dear Mr. Cumbie:

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# 474305 (ORR# W014986).

The City of Fort Worth (the "city") received a request for vendor responses and related scoring sheets for request for proposals number 11-0004. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Accela, Inc. ("Accela"). Accordingly, you state, and provide documentation showing, you notified Accela of the request for information and of its 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, you acknowledge this request for information was ruled upon in Open Records Letter No. 2012-06918 (2012). In that ruling, we determined the city (1) may not withhold any of the information pertaining to Infor Global Solutions, Inc. ("Infor"), under section 552.110(a) of the Government Code because Infor failed to establish a *prima facie* case that any portion of its information at issue meets the definition of a trade secret and did not demonstrate the necessary factors to establish a trade secret claim for its information; (2) may not withhold any of the information pertaining to Infor under section 552.110(b) of the

Government Code because Infor made only conclusory allegations that the release of any of its information would result in substantial harm to its competitive position; (3) may not withhold the submitted information on the basis of any proprietary interest CitiTech Systems, Inc. ("CitiTech"); IBM Global Business Services ("IBM"); Marshall and Associates ("Marshall"); NTB Associates, Inc. ("NTB"); and Skire, Inc. ("Skire") may have in the information because CitiTech, IBM, Marshall, NTB, and Skire did not submit comments explaining why the submitted information should not be released; and (4) must release the submitted information, but may release any information subject to copyright only in accordance with copyright law. You now submit additional information for our review and assert Accela may have a protected proprietary interest in the information. You acknowledge the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly submitted information. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third-party interests are at stake, we will consider whether the newly submitted information must be withheld. However, you must continue to follow Open Records Letter No. 2012-06918 with respect to the remaining requested information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 Accela explaining why the submitted information should not be released. Therefore, we have no basis to conclude Accela 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, the city may not withhold the submitted information on the basis of any proprietary interest Accela may have in the information.

We note some of the materials at issue 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.

In summary, except for the newly submitted information, the city must continue to follow our ruling in Open Records Letter No. 2012-06918. The newly submitted information must be released; however, any information that is subject to copyright may be released only 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 474305

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)