



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2014

Mr. Craig Purifoy  
Open Records Coordinator  
DFPS Records Management Group  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2014-09556

Dear Mr. Purifoy:

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# 524746 (ORR ID# 03132014FVK ).

The Texas Department of Family and Protective Services (the "department") received a request for the evaluation sheets, a list of companies the solicitation was sent to, that submitted proposals, and were invited to orals, and the winning proposal submitted by KPMG, L.L.P. ("KPMG") for a specified request for proposals. You state the department will release some of the requested information. 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 KPMG. Accordingly, you state, and provide documentation showing, you notified KPMG 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.

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 KPMG explaining why the submitted information should not be released. Therefore, we have no basis to conclude KPMG 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest KPMG may have in the information.

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. As no exceptions to disclosure have been raised, the department must release the submitted information; however, any information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 524746

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Charles Collier  
KPMG LLP  
111 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(w/o enclosures)