



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2014

Ms. Elaine Nicholson  
Assistant City Attorney  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2014-21008

Dear Ms. Nicholson:

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# 544039.

The City of Austin (the "city") received a request for vendor responses to a specified request for proposals, excluding the response from the requestor's company. You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified Avolve Software Corporation ("Avolve") and e-PlanSoft of the request for information and of their right to submit arguments to this office as to why the information at issue 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 received comments from Avolve. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the argument of the interested third party to withhold the information at issue.

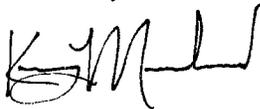
Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from e-PlanSoft explaining why its submitted information should not be released. Therefore, we have no basis to conclude e-PlanSoft 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 e-PlanSoft may have in the information.

We note Avolve only argues against the disclosure of information that was not submitted by the city for our review. This ruling does not address information that was not submitted by the city and is limited to information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). As Avolve has not submitted arguments against disclosure of any of the submitted information, the city may not withhold any information on the basis of Avolve's arguments. As no other exceptions to disclosure have been raised, the city must release the submitted information.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 544039

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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