



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2015

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-13952

Dear Ms. Freeland:

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# 570720 (DPS PIR # 15-1855, 15-2151, 15-2446).

The Texas Department of Public Safety (the "department") received three requests for information pertaining to a specified solicitation number, including copies of vendors' responses and accompanying transmittal letters.¹ We understand the department takes no position with respect to whether the submitted information is excepted from disclosure; however, you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the department notified Accenture, Cardinal Tracking, Inc., Copsync, CTS America, GeoComm, Infor Public Sector, Inc., InterAct, Motorola Solutions, Inc., Southern Software, Spillman Technologies, Inc., Sungard, Tiburon, Inc., TriTech Software Systems, and Intergraph Corp. of the request for information and of their rights to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 applicability of exception in certain circumstances).

¹We note one of the requestors only seeks certain vendor responses.

We have received comments from CTS America, GeoComm, and InterAct. We have considered the submitted arguments and reviewed the submitted information.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only CTS America, GeoComm, and InterAct explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *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.

InterAct raises section 552.104 of the Government Code. Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 13 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 17. InterAct quotes section 552.104, but does not make any arguments explaining how section 552.104 applies to its submitted information. After review, we find InterAct has failed to demonstrate the release of its information would give advantage to a competitor or bidder. Accordingly, the department may not withhold any of InterAct's information under section 552.104 of the Government Code.

InterAct also asserts some of its information is protected from disclosure by section 552.153 of the Government Code. Section 552.153 protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides in part:

(a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by [s]ection 2267.001.

(b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

Gov't Code § 552.153(a)-(b). Section 2267.001(10) of the Government Code provides "qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

Id. § 2267.001(10). Further, section 2267.001(11) provides that “responsible governmental entity” means “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). However, neither the department nor InterAct explains how the information relates to a proposal for a qualifying project authorized under chapter 2267 of the Government Code. Accordingly, we find the department may not withhold any portion of InterAct’s information under section 552.153 of the Government Code.

Both CTS America and GeoComm assert a portion of their submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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.*; *see also* Open Records Decision No. 661 at 5 (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).

Both CTS America and GeoComm raise section 552.110(b) for portions of their information. The companies contend the release of certain pricing information has the potential to cause them substantial competitive harm under section 552.110(b) of the Government Code. Upon review of these arguments, we find CTS America and GeoComm have demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the department must withhold the information we have marked under section 552.110(b). However, we find CTS America and GeoComm have not demonstrated the release of any of the remaining information would result in substantial competitive injury. *See* Open Records Decision Nos. 661 at 5-6 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 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). Accordingly, the department may not withhold any of CTS America’s or GeoComm’s remaining information under section 552.110(b) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or

registration issued by an agency of this state or another state or country.² Gov't Code § 552.130(a)(1)-(2). The remaining information contains motor vehicle record information, which we have marked. However, we are unable to determine whether the marked information constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle record information created as a sample for purposes of responding to the request for proposals. Thus, to the extent the information we have marked constitutes actual motor vehicle record information, the department must withhold the types of information we marked under section 552.130 of the Government Code. To the extent the information we have marked consists of fictitious motor vehicle record information, it may not be withheld under section 552.130 of the Government Code.

We note some of the remaining 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.

In summary, the department must withhold CTS America's and GeoComm's information we have marked under section 552.110(b) of the Government Code. To the extent the information we have marked constitutes actual motor vehicle record information, the department must withhold the types of information we marked under section 552.130 of the Government Code. The department must release the remaining information; however, the department may only release information subject to copyright 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 570720

Enc. Submitted documents

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(w/o enclosures)

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