



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Ms. Kristi Godden
Counsel for the Education Service Center, Region 2
O'Hanlon, McCollum & Demerath
808 West Avenue
Austin, Texas 78701-2208

OR2017-04849

Dear Ms. Godden:

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# 649098 (ESC2-16-002, ESC2-16-003).

The Education Service Center, Region 2 (the "center"), which you represent, received two requests from different requestors for information pertaining to a specified request for proposal. Although you take no position with respect to the public availability of the submitted information, you indicate release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you notified Jaime Rios Financial Services, Inc. ("Financial Services") of the request and of its right to submit arguments to this office explaining why the information at issue 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); *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 applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted any scoring sheets pertaining to the specified request for proposal. Therefore, to the extent information responsive to this aspect of the request existed and was maintained by the center on the date the center received the second request, we assume you have released it to the second requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Financial Services explaining why the submitted information should not be released. Therefore, we have no basis to conclude Financial Services 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 center may not withhold the submitted information on the basis of any proprietary interest Financial Services 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. As no exceptions to disclosure are raised, the center must release the submitted information; 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.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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 649098

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)