



September 26, 2002

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2002-5418

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169664.

The University of Texas System (the "System") received a request for the bid proposal documents that ICI Construction, Inc. ("ICI Construction") submitted to the System for Project No. 801-006.¹ The requestor also seeks any documents ICI Construction submitted to the System after the submission of the proposal and asks that the System indicate that such documents were submitted after the bid opening. The System takes no position with respect to the required public disclosure of the requested information. You state that you informed ICI Construction of this request in accordance with section 552.305 of the Government Code, which requires a governmental body to notify a person whose proprietary interests may be implicated by a request for information. *See* Open Records Decision No.542 (1990). You ask that we consider whether the requested records are excepted from disclosure.

Section 552.110 of the Government Code excepts from required public disclosure information for which a third party demonstrates a proprietary interest. *See* Gov't Code 552.110 (excepting from required public disclosure trade secrets and certain commercial or financial information); Open Records Decision Nos. 652 (1997), 552 (1990). To date, ICI Construction has not submitted to this office any reason to withhold the

¹The requestor clarified his request by informing the System that he seeks the information of ICI of Dallas, and not the information of ICI of Weatherford.

requested information. Consequently, we have no basis for concluding that the submitted proposal is excepted from public disclosure. *See* Open Records Decision No. 552 (1990). As neither the System nor ICI Construction has cited to a statute or judicial decision that makes the information privileged or confidential, the System may not withhold the requested information under section 552.110 of the Government Code. Nor can we conclude that any other exception to disclosure applies to the submitted records, with the following exception.

The submitted information contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential.² Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The System must, therefore, withhold e-mail addresses of members of the public under section 552.137. We have marked the records accordingly.

In summary, with the exception of the information subject to section 552.137, the System must release the requested information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

²House Bill 2589 also makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 169664

Enc: Submitted documents

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