



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 4, 2002

Mr. Renaldo L. Stowers
Associate general Counsel
University of Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2002-6893

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173060.

The University of North Texas System (the "system") received a request for copies of information "[r]elated to RFP# 2-TM08/CB for 'Enterprise Information System Professional Services for the University of North Texas System' which was awarded to Ciber, Inc.," including: "(1) a copy of the original proposal, (2) a copy of the best and final offer (BAFO), (3) a copy of the legal contract and any amendments, (3) UNT evaluation documentation from the original submission and BAFO, and (5) Orals [one and two] presentations." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We note that you have submitted correspondence indicating that you have notified third parties whose information is the issue of the current request pursuant to section 552.305 of the Government Code. *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 that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted samples of information.¹

You argue that the requested information consists of certain commercial information and must be withheld under section 552.110(b) of the Government Code. As of the date of this letter, none of the noticed third parties have submitted to this office their reasons, if any, as

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to why the submitted information should not be released. Consequently, this office must consider whether the system has demonstrated the applicability of section 552.110(b) to the submitted information.

Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). 498 F.2d 765 (D.C. Cir. 1974). The governmental body, or interested third party, claiming the commercial or financial prong of section 552.110 must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Having reviewed the information and the system's arguments, we conclude that the system has not provided a specific factual or evidentiary showing of competitive injury to the third parties involved. Therefore, the system may not withhold the requested information under section 552.110(b).

You also assert that the information is excepted from disclosure by section 552.101 of the Government Code and common-law privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The information at issue here is not the type of information considered intimate and embarrassing. We conclude the information cannot be withheld under section 552.101 in conjunction with common-law privacy. The system must release the requested information.

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 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 173060

Enc: Submitted documents

c: Mr. Tod E. Pendergrass
Direct Results Legal Service
213 Congress Avenue, Suite 200
Austin, Texas 78701
(w/o enclosures)

Mr. Kelly Stewart
SCT
4100 Alpha Road, Suite 900
Dallas, Texas 75244
(w/o enclosures)

Mr. Chris Langdon
PeopleSoft, Inc.
2206 Thompson
Richmond, Texas 77469
(w/o enclosures)

Mr. Don Kirkpatrick
PeopleSoft
15950 North Dallas Parkway, Suite 600
Dallas, Texas 75248
(w/o enclosures)

Mr. Steve Wallace
Oracle
222 West Las Colinas
Irving, Texas 75039
(w/o enclosures)

Mr. Frank Lancione
Oracle
516 Herndon Parkway
Herndon, Virginia 20170
(w/o enclosures)

Mr. Thomas Payne
Ciber
3556 Burch Avenue
Cincinnati, Ohio 45208
(w/o enclosures)

Mr. Bradley Englert
Accenture
1501 South Mopac Expressway, Suite 300
Austin, Texas 78746
(w/o enclosures)