



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 2, 2003

Ms. Carol Longoria
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-4563

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# 183776.

The University of Texas at Arlington (the "university") received a request for "[t]hree low bids with HUB plans for Bid Invitation Number 10301702-WAJUM for a 179'4" x 76'10" Office/Research Modular Building opened 1-10-03 at 3:00 p.m." You advise that the university requested a clarification from the requestor because the bid at issue was never finalized. *See* Gov't Code § 552.222(b) (providing that if governmental body is unable to determine nature of records being sought, it may ask requestor to clarify request so that desired records may be identified). *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification). The requestor responded that he seeks all documents submitted by each bidder, including HUB plans. The requestor also asks the university to provide reasons why it would not notify prior bidders on a project of any subsequent re-bid. We note that the Public Information Act (the "Act") does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). *See also Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (the Act does not require governmental body to disclose information that did not exist at time request was received). However, a

governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp.*, 562 S.W.2d at 267-68; Open Records Decision No. 561 at 8 (1990). In this regard, you advise that the university has no information responsive to this inquiry. Therefore, we find that the university is not required to provide the requested reasons.

You claim that the requested documents may be confidential, but make no arguments and take no position as to whether the information is so excepted from disclosure. You inform this office and provide documentation showing that you have notified two interested third parties, Nortex Modular Space (“Nortex”) and Resun Leasing, Inc. (“Resun”), whose proprietary interests may be implicated by the request, of the request for information. *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 that 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). As of the date of this ruling, this office has received a response from Nortex. We have considered the arguments of Nortex and have reviewed the submitted information.

We first note that 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, Resun has not submitted to this office its reasons explaining why its information should not be released. Therefore, Resun has provided us no basis to conclude that its information is excepted from disclosure. *See, e.g.*, Gov’t Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

With regard to Nortex’s arguments, Nortex fails to specify any portion of the Act which would except its information from disclosure, nor does Nortex explain how the release of its information would cause it harm. Therefore, neither has Nortex provided us with any basis to conclude that its information is excepted from disclosure. *See, e.g.*, Gov’t Code § 552.110(b); Open Records Decision Nos. 552 at 5, 542 at 3. As a result, we conclude that the submitted information of both parties must be released in its entirety, with the following exceptions.

We note that a social security number contained within Resun’s information may be confidential under federal law, and therefore, excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information

considered to be confidential by law, either constitutional, statutory, or by judicial decision.” A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or is not maintained by the university pursuant to any provision of law enacted on or after October 1, 1990.

Furthermore, the submitted information contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. 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 university must, therefore, withhold the e-mail addresses of members of the public under section 552.137. We have marked the types of e-mail addresses that must be withheld under section 552.137. We note that section 552.137 does not apply to a general e-mail address or website address of a business, or to a government employee's work e-mail address.

Finally, we note that a portion of the submitted materials is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990).

In summary, a social security number contained within the submitted information may be confidential under the federal Social Security Act. You must withhold the types of e-mail

addresses we have marked under section 552.137. The remaining information must be released in accordance with applicable copyright laws.

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 Dep't of Pub. 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,



Kristin Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 183776

Enc. Submitted documents

c: Mr. Jeff Austin
Modular Building Associates
P.o. Box 2468
Coppell, Texas 75019
(w/o enclosures)

Mr. Jim Attrell
Nortex Modular Space
50 Remington Terrace
Highland Village, Texas 75077
(w/o enclosures)

Mr. Chris Brewer
Resun Leasing, Inc.
1930 S. Burleson Blvd.
Burleson, Texas 76028
(w/o enclosures)