



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2005

Ms. Carol Longoria
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2005-04107

Dear Ms. Longoria:

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# 223914.

The University of Texas at Austin (the "university") received a request for all copies of proposals and evaluations related to RFP No. 091004RL for vending services. You state that you have released information pertaining to one of the vendors that submitted a proposal.¹ Although you assert that the remaining requested information may be excepted from disclosure under various provisions of the Act, you take no position and make no arguments regarding these exceptions. Instead, you claim that release of the responsive information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305, you state that you have notified the interested third parties of the request and of their opportunity to submit comments to this office.² 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 section 552.305 permits governmental body to rely on interested

¹ You inform us that Lone Star Ice Cream, Inc. has notified the university that the company does not object to the release of its proposal.

² The third parties that received notice pursuant to section 552.305 are the following: Canteen Vending Services/Compass Group, NAD ("Canteen"), MovieVend, Inc. ("MovieVend"), AVS Services, Ltd. ("AVS"), and DVDirect, L.L.C. ("DVD").

third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the arguments submitted by Canteen and reviewed the submitted information.

Initially, we 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, MovieVend, AVS, and DVD have not submitted any comments to this office explaining how release of the requested information would affect the companies' proprietary interest. Therefore, we have no basis to conclude that these companies have any proprietary interests in the submitted information. *See 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. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the university may not withhold any portion of the submitted information on the basis of any proprietary interest that MovieVend, AVS, or DVD may have in the information

Canteen asserts that the requested information is excepted from disclosure pursuant to 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." Thus, section 552.101 protects information that is deemed to be confidential under other law. *See Open Records Decision Nos. 611 at 1 (1992)* (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Canteen generally asserts that the requested information is excepted from disclosure under section 552.101. However, Canteen has not directed our attention to any law, nor is this office aware of any law, under which any of the submitted information is deemed to be confidential by law for purposes of section 552.101. Therefore, Canteen has not demonstrated that any of the submitted information is excepted from disclosure under section 552.101 of the Government Code.

We also understand Canteen to assert that the information is excepted from disclosure pursuant to section 552.105 of the Government Code. We note, however, that section 552.105 only protects the interests of governmental bodies, not those of private parties such as Canteen. *See Open Records Decision Nos. 564 at 2 (1990)* (governmental body may waive statutory predecessor to section 552.105), 522 (1989) (discretionary exceptions in general). Because the university has not raised this exception, none of Canteen's information may be withheld on this basis.

We now address Canteen's assertions 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 that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). To establish that information is excepted from disclosure under section 552.110(b) a party must make a specific factual or evidentiary showing that substantial competitive injury would result from release of the information at issue. Conclusory or generalized allegations that disclosure will result in competitive harm will not suffice. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Upon review of Canteen’s arguments and the information at issue, we conclude that Canteen has not made the specific factual or evidentiary showing required under section 552.110(b) that the release of its information would likely result in substantial competitive harm to the company. *See* Open Records Decision Nos. 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 was entirely too speculative), 494 at 6 (1988) (general allegations of unspecified competitive harm not sufficient under statutory predecessor to section 552.110). We note that the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision No. 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Therefore, the university may not withhold any of the information related to Canteen pursuant to section 552.110 of the Government Code.

However, we note that some of the submitted proposals contain social security numbers. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that are obtained or 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* 42 U.S.C. § 405(c)(2)(C)(viii)(I). We have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 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 any social security numbers, you should ensure that no such information was obtained or is maintained by the university pursuant to any provision of law enacted on or after October 1, 1990.

We also note that some of the submitted information is subject to section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled,

or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, the university must withhold the insurance policy numbers that we have marked under section 552.136.

In summary, the university must withhold the policy numbers we have marked under section 552.136. The social security numbers at issue may be confidential under federal law. The remaining submitted information must be released 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 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 223914

Enc. Submitted documents

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