



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2007

Mr. Scott Kelly
Deputy General Counsel
Office of General Counsel
Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2007-03162

Dear Mr. Kelly:

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#274385.

The Texas A&M University System (the "system") received two requests for information relating to a specified request for proposal ("RFP") for banking services by the system. You state that some responsive information has been released to the requestor. You take no position with respect to the public availability of the information that you have submitted. You believe, however, that this information may implicate the interests of interested third parties. Pursuant to section 552.305(d) of the Government Code, you have notified the interested third parties, Wachovia Bank, JP MorganChase, Wells Fargo Bank, Citibank Texas, N.A., Bank of America, and Association of Financial Professionals, of the request and of their opportunity to submit comments to this office. *See Gov't Code § 552.305 (permitting an interested third party to submit to the attorney general reasons why the requested information should not be released); Open Records Decision No. 542 (1990) (determining that the statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances).* We have reviewed the submitted information.

Initially, we note that the bid pricing form in Exhibit B is the subject of a previous ruling issued by our office. On February 21, 2007, this office issued Open Records Letter No. 2007-02093 (2007) in which we ruled that the bid pricing form must be released to the

requestor. We presume that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the system must continue to rely on our ruling in Open Records Letter No. 2007-02093 with respect to the bid pricing form in Exhibit B. *See* Open Records Decision No. 673 (2001) (a governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We will now address your claims regarding the financial institutions' proposals in Exhibits B-1, B-2, B-3, B-4, and B-5.

Under section 552.305, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why the requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Wachovia Bank, JP MorganChase, Wells Fargo Bank, Citibank Texas, N.A., Bank of America, and Association of Financial Professionals, have failed to submit comments to this office explaining how the release of the submitted proposals in Exhibits B-1, B-2, B-3, B-4, and B-5 would affect their proprietary interests. Therefore, Wachovia Bank, JP MorganChase, Wells Fargo Bank, Citibank Texas, N.A., Bank of America, and Association of Financial Professionals, have failed to provide us with any basis to conclude that the requested proposals are proprietary for purposes of the Act. Accordingly, the system may not withhold any of the submitted information based on the proprietary interests of these third parties.

We note, however, that Exhibit B-1 contains bank account numbers. Section 552.136(b) of the Government Code 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(b). Thus, the system must withhold any account numbers pursuant to section 552.136.

Finally, we note that some of the submitted information 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. 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, the system must continue to rely on our ruling in Open Records Letter No. 2007-02093 with respect to the bid pricing form in Exhibit B. The system must withhold any account numbers under section 552.136. The system must release the remaining information, but any copyrighted information may only be released in accordance with copyright law.

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); *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 Office of the Attorney General 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. 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,



Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/eb

Ref: ID# 274385

Enc. Submitted documents

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