



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2007

Ms. Valerie Coleman-Ferguson  
Associate General Counsel  
University of Houston System  
E. Cullen Building  
Suite 311  
Houston, Texas 77204-2162

OR2007-04617

Dear Ms. Coleman-Ferguson:

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#276615.

The University of Houston System (the "system") received a request for the following: (1) the financial disclosure of all members of the board of regents; and (2) a copy of a specified contract. You state that there is no responsive information pertaining to item (1) of the request.<sup>1</sup> Although you take no position with respect to the submitted information, you claim that the submitted information may contain proprietary information subject to exception under the Act. You state, and provide documentation showing, that you notified the interested third party, Constellation New Energy ("CNE"), of the system's receipt of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released to the requestor. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

explain applicability of exception in the Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.

CNE claims that portions of the submitted information are excepted from disclosure under section 552.110(b) 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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Having considered CNE’s arguments and reviewed the submitted information, we find that CNE has demonstrated that release of a portion of the submitted information would cause the company substantial competitive harm. Accordingly, the system must withhold the information we have marked under section 552.110(b) of the Government Code. However, we determine that CNE has not established by specific factual evidence that any of the remaining information is excepted from disclosure as commercial or financial information the release of which would cause CNE substantial competitive harm under section 552.110(b). *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 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 is too speculative), 319 at 3 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Specifically, some of the information CNE seeks to withhold includes pricing information. We note that the pricing information of a winning bidder is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Thus, no portion of the remaining information may be withheld under section 552.110 of the Government Code, and 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); *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,

A handwritten signature in black ink, appearing to read 'Holly R. Davis', with a long horizontal flourish extending to the right.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 276615

Enc. Submitted documents

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