



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2008

Ms. Talibah Young
Assistant General Counsel
University of Houston System
E. Cullen Building, Suite 311
Houston, Texas 77204-2162

OR2008-07651

Dear Ms. Young:

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# 312087.

The University of Houston (the "university") received a request for all solicitations, awarded contracts, cost and technical proposals submitted, award evaluations and score sheets, and award letters pertaining to retail banking services at the university. You state that you have provided some of the requested information to the requestor. Although you take no position with respect to the public availability of the submitted proposals, you state that release of these proposals may implicate the proprietary interests of several third parties. Accordingly, pursuant to section 552.305 of the Government Code, you have notified Penn Security Bank and Trust Company ("Penn"), Woodforest National Bank ("Woodforest"), JPMorgan Chase Bank ("Chase"), Wells Fargo Bank ("Wells Fargo"), Wachovia Bank ("Wachovia"), and Higher One, Inc. ("Higher One") of the request and of each company's opportunity to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of an exception to disclosure in certain circumstances). We have received correspondence from Woodforest and Higher One, and we have reviewed the submitted proposals.

Initially, we note that most of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2006-11337 (2006) and 2008-06817 (2008). In Open Records Letter No. 2006-11337, we concluded that the university may not withhold any information pertaining to Woodforest, Chase, Wells Fargo, or Wachovia, but must instead release these companies' proposals. In Open Records Letter No. 2008-06817, we concluded that the university may

not withhold any information pertaining to Higher One under section 552.101 or section 552.110 of the Government Code, but must instead release Higher One's proposal. Accordingly, as we have no indication that the law, facts, and circumstances on which our prior rulings were based have changed, we conclude that the university must continue to rely on Open Records Letter Nos. 2006-11337 and 2008-06817 as previous determinations and release the proposals pertaining to Woodforest, Chase, Wells Fargo, Wachovia, and Higher One in accordance with those prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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 decision, Penn has not submitted to this office any arguments explaining why its information should not be released. Therefore, we have no basis to conclude that Penn has a protected proprietary interest in its proposal. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, Penn's proposal must be released.

In summary, the university must release the proposals of Woodforest, Chase, Wells Fargo, Wachovia, and Higher One in accordance with Open Records Letter Nos. 2006-11337 and 2008-06817. The university must also release Penn's proposal.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

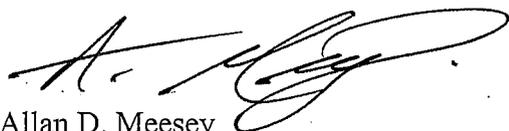
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/mcf

Ref: ID# 312087

Enc. Submitted documents

c: Ms. Elizabeth D. Steponkus
FedSources
8400 Westpark Drive, 4th Floor
McLean, Virginia 22102
(w/o enclosures)

Mr. Charles A. Vernon
Attorney at Law
25231 Grogan's Mill Road, Suite 175
The Woodlands, Texas 77380
(w/o enclosures)

Mr. Douglas Duguay
Director
Campus Banking Department
Penn Security Bank
& Trust Company
150 North Washington Avenue
Scranton, Pennsylvania 18503
(w/o enclosures)

Mr. Kevin Duncan
Vice President
Wells Fargo Bank
Campus Card Services
MAC A0303-066
1200 Concord Avenue, Suite 650
Concord, California 94520
(w/o enclosures)

Ms. Pamela J. Davis
JPMorgan Chase Bank
707 Travis 9th Floor North
Houston, Texas 77002
(w/o enclosures)

Mr. Mark Volchek
Chief Financial Officer
25 Science Park
Corner of Munson Street
and Winchester Avenue
New Haven, Connecticut 06511
(w/o enclosures)

Mr. Lo Andrews
JPMorgan Chase Bank
2200 Ross Avenue, 8th Floor
Dallas, Texas 75201
(w/o enclosures)

Mr. Vernon Sloan
NC-0339
Wachovia Bank
301 South Tryon Street
Charlotte, North Carolina 28288
(w/o enclosures)