



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 2, 2009

Mr. William L. Fly  
University Attorney  
Texas State University  
601 University Drive  
San Marcos, Texas 78666-4615

OR2009-01324

Dear Mr. Fly:

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# 333949.

Texas State University (the "university") received a request for the winning bidder's bid proposal and the evaluation sheets used to select a winning bidder in a specified RFP. You state that you have provided the evaluation sheets to the requestor. Although the university takes no position on the release of the remaining requested information, you explain that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the university notified Ratex Business Solutions ("Ratex") of this request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

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 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, Ratex has not submitted any comments to this office explaining how release of the information at issue would affect its proprietary interests. Therefore, Ratex has not provided us with any basis to conclude that

it has a protected proprietary interest in any of 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). Therefore, the submitted information may not be withheld on this basis, and it must be released to the requestor.

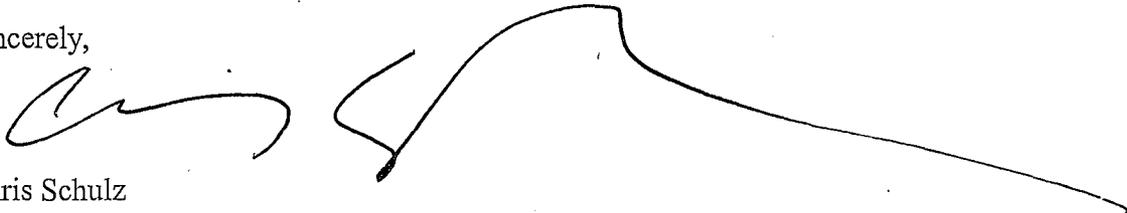
We note, however, that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672. A governmental body must allow 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 university must release the submitted information, but any information protected by copyright must be released in accordance with applicable copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', written over a horizontal line that extends across the page.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 333949

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)