



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 19, 2009

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

OR2009-02193

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# 335334.

Texas A&M University- Commerce (the "university") received a request for the proposal Ex Libris (USA), Inc. ("Ex Libris") submitted in response to RFP No. B800030: Integrated Library System. Although you take no position as to the disclosure of the requested information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the university notified Ex Libris of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *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 explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

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, this office has received no correspondence from Ex Libris. Thus, Ex Libris has not demonstrated that any of its information is proprietary for purposes of the Act, and the university may not withhold it on that basis. *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).

We note that portions 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 protected by copyright. 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 materials protected by copyright, 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). As no exceptions to disclosure have been raised, the university must release the requested information, but any copyrighted information may only be released in accordance with 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 335334

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Kathryn G. Heavey
Director of Sales Administration
Ex Libris (USA), Inc.
1350 East Touhy Avenue, Suite 200E
Des Plaines, Illinois 60018
(w/o enclosures)