



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2009

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

OR2009-10698

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# 351084 (PIR # 09.018).

Texas A&M University-Kingsville (the "university") received a request for "a complete copy of the awarded proposal" pertaining to RFP B900019. Although you take no position as to whether the submitted information must be released to the requestor, you state that the submitted documents may contain proprietary information subject to exception under the Act. Accordingly, you provide documentation showing that the university notified MGT of America, Inc. ("MGT") of the request for information and of its rights to submit arguments to this office as to why the submitted 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 a governmental body's notice under section 552.305(d) of the Government Code 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, MGT has not submitted comments to this office explaining why any portion of the submitted

information relating to it should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate its proprietary interests, and none of it may be withheld on this basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

We note that some of the submitted information is copyrighted. 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). Accordingly, as no exceptions to disclosure have been raised, the university must release the submitted information, but any information protected by copyright must 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 351084

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. J. Kent Caruthers
MGT of America, Inc.
502 East 11th Street, Suite 300
Austin, Texas 78701
(w/o enclosures)