



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

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

OR2009-11089

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# 351944 (TAMU PIR No. 09-272).

Texas A&M University (the "university") received a request for each vendor's response to RFP 09-0009 for academic scheduling at the university. Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of Comparatio USA, L.L.C. ("Comparatio") and Ad Astra Information Systems, L.L.C. ("Ad Astra"). Thus, pursuant to section 552.305 of the Government Code, you have notified Comparatio and Ad Astra of this request for information and of their right to submit arguments to this office explaining the submitted information should not be released.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have reviewed the submitted information.

¹You inform us that the requestor's company also submitted a proposal that is responsive to this request. You have not submitted this proposal for our review and we understand you to assert that the requestor did not intend to request her own company's proposal. This ruling does not address the public availability of that proposal.

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, we have not received arguments from Comparatio or Ad Astra. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of these companies, and the university may not withhold any portion of the submitted information on that basis. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 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).

We note, however, a portion of the submitted information is subject to section 552.136 of the Government Code.² Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Upon review, we determine the insurance policy numbers we have marked constitute access devices numbers for purposes of section 552.136. Therefore, the university must withhold the marked insurance policy numbers under section 552.136 of the Government Code.

We also note that some of the submitted information is 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. 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).

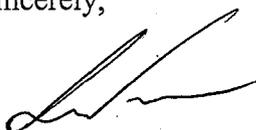
In summary, the university must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 351944

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Pritchett
Ad Astra Information Systems, LLC
6900 West 80th Street, Suite 300
Overland Park, Kansas 66204
(w/o enclosures)

Mr. Bob Belbeck
Comparatio, USA, LLC
4517 Minnetonka Boulevard
St. Louis Park, Minnesota 55416
(w/o enclosures)