



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2009

Mr. Brian S. Nelson  
General Counsel  
Lone Star College System  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2009-11725

Dear Mr. Nelson:

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# 352876.

The Lone Star College System (the "college") received a request for a bid tabulation and awarded vendor response to a specified request for proposals. You state the college has provided the requested bid tabulation to the requestor. Although the college takes no position as to the disclosure of the submitted information, you state that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the college notified JPMorgan Chase Bank ("Chase") of the request for information and of its right 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.

Initially, we must address the college's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. We note the college received the initial request for information on May 27, 2009. The college requested and

received clarification of the request on May 28, 2009. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state the college was closed for business on June 5, 2009 and on June 12, 2009. Thus, the ten-business-day deadline was June 11, 2009. However, the college did not request a ruling from this office until June 17, 2009. Consequently, we conclude the college failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests may be at stake, we will consider whether the submitted information must be withheld.

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 letter, we have not received any comments from Chase explaining why the submitted information should not be released. Therefore, we have no basis to conclude that Chase has a protected proprietary interest in the submitted information. *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. Accordingly, the college may not withhold the submitted information based upon the proprietary interests of the third party.

We note 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). The submitted 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.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 352876

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)