



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 26, 2009

Mr. John Lawhon  
General Counsel  
Texas Woman's University  
P.O. Box 425497  
Denton, Texas 76204

OR2009-12095

Dear Mr. Lawhon:

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# 353765.

Texas Woman's University (the "university") received a request for the proposals of the top five ranked companies submitted in response to a specified project. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code.<sup>1</sup> Furthermore, you inform us, and provide documentation showing, that you notified the interested third parties of the request and of their right to submit arguments to this office as to why their information should not be released.<sup>2</sup> See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.110, this office has concluded that section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>The interested third parties are: 3i Construction, L.L.C. ("3i"), Beach Construction, Inc. ("Beach"), Constructors & Associates, Inc. ("C&A"), FJW Construction, L.L.C., ("FJW"), and Reeder General Contractor's, Inc. ("Reeder").

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 considered the exception you claim and 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 ruling, we have not received any comments from 3i, Beach, C&A, FJW, or Reeder explaining why the submitted information should not be released. On behalf of the interested third parties, you assert that the submitted information is excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Because we have yet to receive comments from 3i, Beach, C&A, FJW, or Reeder, we have no basis to conclude that any of these parties have a protected proprietary interest in the submitted information, and the university may not withhold any portion of their information on that basis. *See* 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.

We 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). Accordingly, as no further 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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 353765

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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