



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2009

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2009-13011

Dear Mr. Ramirez:

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# 355409.

The Lower Colorado River Authority ("LCRA") received a request for the complete responses and evaluations to Request for Qualifications number 7081 for engineering and related services involving named companies. You state you will release the requested evaluations. Although you take no position as to the disclosure of the remaining information, you state the information may implicate the proprietary interests of third parties. You also state, and provide documentation showing, you have notified Freese & Nichols ("Freese"), HDR, PBS&J, Pike Electric ("Pike"), and URS Corporation ("URS") of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *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 the applicability of exception to disclose under Act in certain circumstances). HDR has submitted comments to our office. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Freese, PBS&J, Pike, and URS have not submitted to this office any reasons explaining why the requested information should not be released. Therefore, because these companies have not demonstrated any of the submitted information is proprietary for the purposes of the Act, LCRA may not withhold any of the information pertaining to these companies to protect their interests. *See id.* § 552.110; *see also* 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.

HDR claims its submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

In order to withhold the submitted information under section 552.110(b), HDR must show how the release of the information would cause substantial competitive harm based on specific factual evidence. In this instance, HDR has only made conclusory assertions of competitive harm. Therefore, we find HDR has failed to demonstrate based on specific factual evidence how the release of the submitted information would cause substantial competitive harm to its interests. Furthermore, we note HDR was one of the winning bidders in response to this request for qualifications. The pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); ORD 541. Accordingly, LCRA may not withhold any of the submitted information under section 552.110(b).

We note that a portion of the submitted information is subject to the doctrine of common-law privacy. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses the doctrine of common-law right of privacy.¹ Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Industrial Foundation included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that some of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, LCRA must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In addition, we note a portion of the remaining submitted information is subject to section 552.136 of the Government Code. 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, LCRA must withhold the marked insurance policy numbers under section 552.136 of the Government Code.

We also note that some of the submitted information appears to 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 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, LCRA must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. LCRA must also 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.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 355409

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Wolfhope
Freese & Nichols
10814 Jollyville Road
Building 4, Suite 100
Austin, Texas 78759
(w/o enclosures)

Mr. Keith Jackson, PE
PBS & J
6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730
(w/o enclosures)

Mr. Bob Beckage
Pike Electric
100 Pike Way
Mount Airy, North Carolina 27030
(w/o enclosures)

Ms. Kelly Kaatz
HDR
4401 West Gate Boulevard, Suite 400
Austin, Texas 78745
(w/o enclosures)

Mr. Craig Pederson
URS Corporation
9400 Amberglen Boulevard
Austin, Texas 78729
(w/o enclosures)