



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

Mr. Damon C. Derrick
Office of General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR2009-17053

Dear Mr. Derrick:

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# 362970.

Stephen F. Austin State University (the "university") received a request for a specified proposal.¹ Although you take no position with respect to the public availability of the submitted information, 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 J.E. Kingham Construction Company ("Kingham") 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.

¹We note that the requestor, in part, has asked the university to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the university has made a good faith effort to do so.

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, Kingham has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Therefore, we have no basis to conclude that Kingham has a protected proprietary interest in the submitted information, and none of it may be withheld on that basis. *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.

The university notes that some of the submitted information may 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). As no exceptions against disclosure have been raised, the submitted information must be released in accordance with copyright law to the extent it applies.

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# 362970

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. James A. Kingham
J.E. Kingham Construction Company
312 Old Tyler Road
Nacogdoches, Texas 75961
(w/o enclosures)