



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2009-18188

Dear Mr. Bentley:

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# 365338.

The University of Houston (the "university") received a request for the contracts between the university's department of athletics and other universities' departments of athletics for non-conference football and men's basketball games during a specified time period. Although the university takes no position on the public availability of the requested information, you explain that this information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified the affected third parties of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory 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 comments received from TCU and reviewed the submitted information. We have also considered comments submitted by

¹The notified third parties are Texas A&M-Corpus Christi, U.S. Air Force Academy, University of Alaska-Fairbanks, Iowa State University, Louisiana Tech, Louisiana State University, McNeese State, Mississippi State University, U.S. Naval Academy, Nicholls State University, Northwestern State University, Oklahoma State University, Texas Christian University ("TCU"), Texas Tech University, Troy University, UCLA, University of Nevada, University of Texas-San Antonio, and Western Kentucky University.

the requestor.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 *id.* § 552.305(d)(2)(B). We have received comments from TCU concerning its information. However, as of the date of this letter, we have not received comments from the remaining third parties explaining why their submitted information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in their 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. Consequently, the university may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

TCU raises section 552.110(b) of the Government Code, which 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.*; ORD 661.

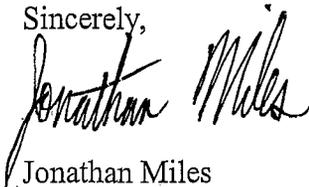
TCU asserts that release of portions of its submitted information would cause it substantial competitive injury. Upon review, we find TCU has only provided conclusory arguments that release of any of the submitted information would cause it substantial competitive harm. See Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982). Accordingly, we determine none of the submitted information may be withheld under section 552.110(b) of the Government Code. As no further exceptions are raised for the submitted information, the submitted information must be released to the requestor.

²Although the requestor asserts that TCU failed to comply with section 552.305(e), we note that a violation of section 552.305 does not result in the legal presumption that the requested information is public under section 552.302 of the Government Code.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 365338

Enc. Submitted documents

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(w/o enclosures)

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