



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2010

Ms. Zeena Angadicheril
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-17375

Dear Ms. Angadicheril:

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# 400235 (OGC# 133030 and 133697).

The University of Texas at El Paso (the "university") received a request for nine categories of information pertaining to bid number 21101006-WEHXC. You state the university does not have information responsive to Category 3 of the request.¹ You also state you have released some information relating to Category 4 of the request. Although you take no position regarding the public availability of the submitted information, you state the release of the information may implicate the rights of the third parties whose information has been requested.² Accordingly, you state, and provide documentation showing, that you have notified Neopost USA and Pitney Bowes of the request and of their right to submit arguments to this office as to why their 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.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note that by letter dated September 22, 2010, the university withdraws its argument under section 552.104 of the Government Code.

Initially, you inform us the university asked the requestor to clarify Categories 4 through 9 of the request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-day period to request attorney general opinion is measured from date the request is clarified or narrowed). You state the university has not received a response to its request for clarification. Accordingly, we find the university has no obligation at this time to release any information that may be responsive to the parts of the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the university must seek a ruling from this office before withholding any responsive information from the requestor.

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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from either of the third parties explaining why their information should not be released. Thus, we have no basis for concluding that any portion of the submitted information pertaining to the third parties constitutes proprietary information, and the university may not withhold any portion of the submitted information on that basis. *Cf.* 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.

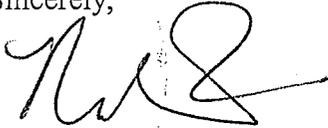
We note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. As no arguments have been made against disclosure of the submitted information, it must be released to the requestor, but any information that is protected by copyright may only 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 400235

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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