



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2012

Ms. Barbara Smith Armstrong
Assistant County Attorney
Harris County Purchasing Agent
1001 Preston, Suite 670
Houston, Texas 77002

OR2012-08521

Dear Ms. Armstrong:

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# 455300 (RFP# 11/0254).

The Harris County Purchasing Agent (the "county") received a request for the bid tabulation and awarded proposal for job number 11/0254. Although you take no position as to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of Lantana Communications ("Lantana"). Thus, pursuant to section 552.305 of the Government Code, you notified Lantana of the request and of the company's right to submit arguments to this office as to why its information should not be released. *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 applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

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, we have not received comments from Lantana explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude Lantana has a protected proprietary interest in the

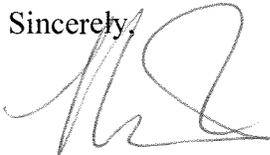
submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the county may not withhold the submitted information on the basis of any proprietary interest Lantana may have in it.

We note some of the submitted information appears to be subject to copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials 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 exceptions to disclosure have been raised, the county must release the submitted information, but may only release copyrighted information 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/bhf

Ref: ID# 455300

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Cindy Anderson
Lantana Communications
2323 South Voss Road, Suite 410
Houston, Texas 77057
(w/o enclosures)