



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2013

Mr. Ronny H. Wall  
Associate General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2013-05693

Dear Mr. Wall:

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# 487166.

The Texas Tech University System (the "system") received a request for a copy of the winning proposal and resulting contract for a specified project. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the Whiting-Turner Contracting Company ("Whiting"). Accordingly, you state the system has notified this third party of the request for information and of its right to submit arguments to this office as to why its 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 Act in certain circumstances). We have received comments from Whiting. We have considered the submitted arguments and reviewed the submitted information.

Whiting asserts some of 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.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find Whiting has not made a specific factual or evidentiary showing that release of any its submitted information would cause it substantial competitive injury. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because 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). Additionally, we note Whiting was the winning bidder in this instance. 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* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Consequently, the system may not withhold any of Whiting's submitted information under section 552.110(b) of the Government Code.

We note 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. 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 further exceptions to disclosure are raised, the system must release the submitted information; however, any information subject to copyright may be released only 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/tch

Ref: ID# 487166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Stewart Shurtleff  
Counsel for The Whiting-Turner Contracting Company  
Griffith Nixon Davison  
5420 LBJ Freeway, Suite 900  
Dallas, Texas 75240  
(w/o enclosures)