



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2013

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

OR2013-06238

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# 485362.

The University of Houston (the "university") received a request for all vendor responses for Request for Proposals 730-12091. 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 Design Academic, Governet, and SmartCatalog. Accordingly, you state, and provide documentation showing, you notified them of the request for information and of their 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.

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 Design Academic, Governet, or SmartCatalog explaining why the submitted information should not be released. Therefore, we have no basis to conclude Design Academic,

Governnet, or SmartCatalog 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, 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. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest Design Academic, Governnet, or SmartCatalog may have in the information.

We note a portion 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. Therefore, the submitted information must be released; 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, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 485362

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bill Beck
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Canada
(w/o enclosures)

Mr. Steven Thyberg
Governet
1000 River Walk Drive, Suite 350
Idaho Falls, Idaho 83402
(w/o enclosures)

Ms. Anne Valentine
SmartCatalog
217 Commercial Street, Suite 406
Portland, Maine 04101
(w/o enclosures)