



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2013

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2013-06567

Dear Ms. Chatterjee:

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# 485299 (UT OGC#s 148376 & 148377).

The University of Texas at San Antonio (the "university") received two requests for information related to the responses from all vendors for RFP# 31201859 for Registrar Content Management System and Related Services. We understand you are releasing most of the requested information to the requestors. Although you claim no exceptions to disclosure of the submitted information, you state its release may implicate the proprietary interests of Leepfrog Technologies, Inc. ("Leepfrog"). Accordingly, you notified Leepfrog of the requests and its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 the circumstances). We have received comments submitted by Leepfrog and reviewed the submitted information.

Leepfrog raises section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763

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).

Leepfrog contends the submitted information constitutes trade secrets. Upon review, we find Leepfrog has not demonstrated how any of its information meets the definition of a trade secret, nor has Leepfrog demonstrated the necessary factors to establish a trade secret claim. *See* RESTATEMENT OF TORTS § 757 cmt. b; ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). Accordingly, the university may not withhold any of the information at issue under section 552.110(a) of the Government Code.

Further, we find Leepfrog has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its information would cause the company substantial competitive harm. *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 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the university may not withhold any of the information at issue under section 552.110(b) of the Government Code. As no further exceptions to disclosure are raised, the submitted information must be released.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som