



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Ms. Cynthia Tynan and Ms. Ana Vieira Ayala
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2015-24196

Dear Ms. Tynan and Ms. Ayala:

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# 587387 (OGC# 164238 and 164497).

The University of Texas at El Paso (the "university") received two requests for information pertaining to a specified request for proposals. You state you have released some information to one of the requestors. Although the university takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of PRIDE Industries One, Inc. ("Pride"), Olympus Building Services, Inc., Building Cleaning Services System, AHI Facility Services, ABM Janitorial Services, GCA Services Group, and SSC Services (collective, the "third parties"). Accordingly, the university states, and provides documentation showing, it notified the third parties of the requests 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 received comments from Pride. We have reviewed the submitted information and arguments.

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 only received comments from

Pride. Therefore, we have no basis to conclude the remaining third parties have 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Section 552.110(b) of the Government Code 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.*; ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Pride contends portions of its information are commercial or financial information, release of which would cause substantial competitive harm to Pride. Upon review of Pride’s arguments under section 552.110(b), we conclude Pride has established the release of its pricing information would cause the company substantial competitive injury. Accordingly, the university must withhold Pride’s pricing information under section 552.110(b). However, we find Pride has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of Pride’s remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude the university may not withhold Pride’s remaining information under section 552.110(b) of the Government Code.

We note portions of the remaining information are subject to section 552.136 of the Government Code.¹ Section 552.136 states, “Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the university must withhold the insurance policy numbers in the submitted information under section 552.136.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note some of the remaining 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.

In summary, the university must withhold Pride's pricing information under section 552.110(b) of the Government Code. The university must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The remaining information must be released; however, any information subject to copyright must 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 587387

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Ms. Gina DeBernardi
Pride Industries
10030 Foothills Boulevard
Roseville, California 95747
(w/o enclosures)

Mr. Ivan Royal
Olympus Building Services, Inc.
1783 West University Drive, Suite 136
Tempe, Arizona 85281
(w/o enclosures)

Mr. Luke Bruns
AHI Facility Services
625 Yuma Court
Dallas, Texas 75208
(w/o enclosures)

Mr. Ron Peden
ABM Janitorial Services
10521 Gulfdale Street
San Antonio, Texas 78216
(w/o enclosures)

Mr. Joe Scully
GCA Services Group
11651 Plan Road #200
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