



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2016-10742

Dear Mr. Moore:

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# 609825 (PIR# W000238-012116).

Texas A&M University (the "university") received a request for information regarding the construction of two specified facilities. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state release of some of the submitted information may implicate the proprietary interests of DBI Architects, Inc. ("DBI"). Accordingly, you state, and provide documentation showing, you notified DBI of the request for information and of their right to submit arguments to this office as to why the information at issue 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 considered the exception you claim and reviewed the submitted information, a portion of which consists of representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from DBI explaining why its submitted information should not be released. Therefore, we have no basis to conclude DBI 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 any portion of the submitted information related to DBI on the basis of any proprietary interest DBI may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 51.914 of the Education Code. Section 51.914(a)(3) provides:

In order to protect the actual or potential value, the following information is confidential and is not subject to disclosure under [the Act], or otherwise:

...

(3) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility that is jointly financed by the federal government and a local government or state agency, including an institution of higher education, if the facility is designed and built for the purposes of promoting scientific research and development and increasing the economic development and diversification of this state.

Educ. Code § 51.914(a)(3). You state Exhibit B-1 includes specifications and plans of two adjacent research and development facilities funded by a public-private partnership between the university and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority. You represent the facilities "will respond to the need for rapid and flexible manufacturing to bolster the nation's ability to respond to any attack or threat." You also state, and provide documentation showing, the two specified facilities were designed "to promote scientific research and development . . . through the development and manufacturing of significant vaccines." We note the university is an institution of higher education. *See id.* § 61.003(8). Based on your representations and our review, we find the submitted information consists of plans, specifications, blueprints, and designs of scientific

research and development facilities jointly financed by the federal government and an institute of higher education to promote scientific research and development and increase the economic development and diversification of the state. Therefore, we find Exhibit B-1 is confidential under section 51.914(a)(3) of the Education Code and must be withheld under section 552.101 of the Government Code on that basis. The university must release the remaining information.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 609825

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)