



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701

OR2016-12342

Dear Ms. Tynan:

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# 612124 (UT OGC# 168210).

The University of Texas System (the "system") received a request for information pertaining to a specified contract. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of The Robins & Morton Group ("R&M"). Accordingly, you state, and provide documentation showing, you notified R&M of the request for information and of its 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 considered the exception you claim and 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 R&M explaining why the submitted information should not be released. Therefore, we have no

basis to conclude R&M 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 system may not withhold the submitted information on the basis of any proprietary interest R&M may have in the information.

Next, we note the submitted information consists of a contract for the purchase of services from a private vendor that is subject to the posting requirements in section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). We note the submitted contract is between the system, which is a state agency, and a private vendor for the purchase of services, and the contract is not expired or completed. *See id.* §§ 2261.002(2) (“State agency” has meaning assigned by Gov't Code § 2151.002), 2151.002(3) (“State agency” includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the submitted contract is required to be posted on the system's Internet website. You seek to withhold a portion of the submitted contract under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the public's right of access to the submitted contract prevails over common-law privacy, and the contract may not be withheld on that basis. Accordingly, the system must release the submitted contract in its entirety.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 612124

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)