



April 24, 2001

Ms. Patricia Muniz-Chapa
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701

OR2001-1635

Dear Ms. Muniz-Chapa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146331.

The University of Texas System (the "university") received three requests for information seeking portions of the proposals submitted to the university in response to a particular request for proposals. The requestors specifically seek sections 9, 10, 11, and 12 of each proposal, as well as all exhibits in each proposal, other than preferred provider lists. You assert that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You have submitted some comments regarding these exceptions, but you also state the university "takes no position" with respect to the requests.¹ In addition, we understand that two of the third parties whose information is responsive to the requests, Academic Risk Management, Inc. ("Academic") and Macori, Inc. ("Macori"), each do not have any objection to the release of their information to the other, but each do object to the release of their information to the other third parties.

¹Evidently, then, the university asserts section 552.104 of the Government Code on behalf of each third party whose information is at issue, not because the university has an interest in withholding the information.

By correspondence dated February 16, 2001, in compliance with section 552.305 of the Government Code,² you notified the following third parties that their information had been requested: Associated Insurance Plans (“Associated”), GM Southwest (“GM”), The Mega Life and Health Insurance Company (“Mega”), and USI Administrators, Inc. (“USI”). By correspondence dated March 6, 2001, pursuant to section 552.305, you additionally notified Academic and Macori. GM and Mega each responded and assert that sections 552.104 and 552.110 apply to their information.³ Associated submitted comments to the university asserting that their information is proprietary, which comments you have forwarded to this office. USI, Academic, and Macori did not respond to the notice. We have considered the asserted exceptions, the submitted comments, and we have reviewed the submitted information.

Initially, with respect to the first of the three requests, you raise the issue of whether the university timely requested a decision from this office. Section 552.301(b) of the Government Code required the university to “ask for the attorney general’s decision and state the exceptions that apply . . . not later than the 10th business day after the date” the university received the request. You advise that the request at issue was received by the university on February 6, 2001. You explain the university was open for business on February 19, 2001, but that this office was closed that day, and the university was thus unable, until the following day, to hand-deliver to this office a copy of the university’s request for a decision. Evidently, then, you calculated the 10 business day deadline after the university received the request to be February 19, 2001. In actuality, however, the university’s 10th business day after February 6, 2001 was February 20, 2001. Thus, the copy of the university’s request to this office that was hand-delivered and received by this office on February 20, 2001 was timely submitted in accordance with section 552.301(b). Moreover, we note that even if February 19 had been the 10th business day after the university’s receipt of the request, the university nevertheless timely complied with section 552.301(b) because the university also placed on that date, in interagency mail and addressed to this office, a copy of the request for a decision. *See Gov’t Code § 552.308(b).*

Next, we must address a procedural matter. You submitted for our review, as a “representative sample,” the responsive information of two of the third parties (Mega and Academic). *See Gov’t Code § 552.301(e)(1)(D)* (requiring governmental body to submit to this office the specific information requested, or representative samples if the information is voluminous). You thus claim that this information is “representative” of the responsive

²*See Gov’t Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

³GM also asserted sections 552.101 and 552.113 of the Government Code, but made no comments or arguments in support of these exceptions. *See Gov’t Code § 552.301(e)(1)(A)*. We therefore do not address GM’s section 552.101 or section 552.113 assertions.

information of Associated, GM, Macori, and USI. You do not explain, however, the basis upon which the university determined that this information is truly representative of the information the university obtained from the other third parties. Especially where, as here, information the university obtained from multiple third parties is claimed to be the proprietary information of each third party, we fail to see how one third party's information could be truly representative of the information of the other third parties. In the future, we thus advise that where the information at issue is from multiple third parties and claimed to be proprietary by each, section 552.301(e)(1)(D) requires the university to submit to this office for review either all of the information at issue, or if the information is voluminous and repetitive, a representative sample *from each third party* whose information is at issue.

As to section 552.104, we note that this exception protects the interests of governmental bodies and is not designed to protect the interests of private parties that submit information to governmental bodies. *See* Open Records Decision No. 592 at 8-9 (1991). We thus find that none of the information at issue is excepted from disclosure by section 552.104.

Section 552.110 protects the interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. *See* Gov't Code § 552.110(a), (b). This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law.⁴ Open Records Decision No. 552 at 5-6 (1990). As to section 552.110(b), to prevent disclosure of commercial or financial information, the party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure.

The university's comments do not establish a *prima facie* demonstration of trade secret for any of the information at issue. The university's comments also do not demonstrate, by specific factual or evidentiary material, that the release of any of the information would likely result in substantial competitive injury to a third party. As noted above, this office received no response to the section 552.305 notice from Academic, Macori, or USI. The comments from GM and Associated establish neither a *prima facie* demonstration of trade secret for their respective information, nor do these comments amount to more than conclusory or generalized allegations of competitive injury. This office thus has no basis for concluding

⁴The 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 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).

that the responsive information the university obtained from Academic, Associated, GM, Macori, or USI is excepted from disclosure under either aspect of section 552.110.

Mega, on the other hand, has demonstrated through specific factual or evidentiary material that most of the information Mega seeks to withhold, if released, would likely result in substantial competitive injury to Mega. We have marked the information at issue, and we conclude the university must withhold this information pursuant to section 552.110(b) of the Government Code.⁵ We are not persuaded, however, that pages 73-77 of the Mega proposal, consisting of personnel biographies, comprises information that is protected from disclosure by section 552.110. *See, e.g.*, Open Records Decision No. 175 at 3 (1977) (although third party proposal otherwise excepted under predecessor to section 552.110(a), resumé information subject to release).

In summary, except for the information contained in the Mega proposal that we have marked as excepted under section 552.110, the university must release to the requestors the information responsive to the requests.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

⁵We have marked the following portions of the Mega proposal as excepted under section 552.110(b): page 46, pages 51-55, the four rate pages immediately following page 59, the two pages titled "Alternate Quotes," the "Annual Rates" information contained on one page, pages 9A(1)-9A(2) and 9B(1)-9B(3), and page 79.

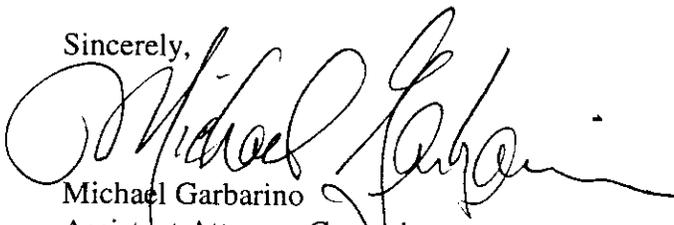
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146331

Encl. Submitted documents

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