



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 10, 2003

Ms. R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
P. O. Box 13065, SFA Station  
Nacogdoches, Texas 75962-3065

OR2003-3964

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182534.

Stephen F. Austin State University (the "university") received a request for a specified contract. Although the university does not take a position with regard to the release of the requested information, it claims that the information may be subject to third party confidentiality claims. Pursuant to section 552.305(d) of the Government Code, the university notified an interested third party, ARAMARK Educational Services ("Aramark"), of the university's receipt of the request and of Aramark's right to submit arguments to this office as to why information relating to Aramark should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered arguments presented by Aramark and have reviewed the submitted information.

Although Aramark references arguments that it presented to us in connection with our consideration of Open Records Letter No. 2001-3002 (2001), we note that the information that has been requested in this instance was not requested of the university, nor considered by our office, in that decision.<sup>1</sup> Furthermore, none of the arguments presented by Aramark in connection with our consideration of Open Records Letter No. 2001-3002 (2001)

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<sup>1</sup> We note that the requestor in Open Records Letter No. 2001-3002 (2001) specifically requested: 1) a videotape of a pre-bid meeting; 2) a videotape of Aramark's presentation; 3) the Aramark bid proposal; 4) the evaluation forms used to compare the proposals and the companies; and 5) the final recommendation comparison given to the university's Board of Regents.

concerned the contract that has been requested in this instance. Finally, we note that Aramark has not presented us with any arguments in connection with our consideration of the contract that has been requested in this instance as to why any portion of the contract should not be released to the requestor based on the proprietary interests of Aramark. Therefore, we have no basis to conclude that the release of any portion of the submitted contract would implicate Aramark's proprietary interests. See Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the university may not withhold any portion of the submitted contract on the basis of any proprietary interest that Aramark may have with regard to its release. Consequently, the university must release the entirety of the submitted contract to the requestor.

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 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 182534

Enc. Submitted documents

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