ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2003

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2003-8687

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192179.

Prairie View A&M University (the "university") received a request for eleven categories of information related to bid number B300018. We note that you have not submitted any information responsive to the items one and two or four through eleven of the request. To the extent such information exists, we presume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301, .302. Although you take no position with respect to the submitted information, you claim that information responsive to the third item of the request, "[c]opies of sealed bids from Emergency Medical Service providers that submitted bids for bid number B300018," may be subject to third party claims. You provide documentation showing that you have notified ABC Emergency Medical Service ("ABC"), the interested third party whose proprietary interests may be implicated, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in the Public Information Act (the "Act") in certain circumstances).

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). Although you state that ABC indicated to the university that it believed the requested information is excluded from release under sections 552.104 and 552.110 of the Government Code, as of the date of this letter, ABC has not submitted to this office its reasons explaining why its information should not be released. Therefore, ABC has provided this office no basis to conclude that the submitted information is protected proprietary information. *See e.g.*, Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, 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); Open Records Decision Nos. 592 at 8-9 (1991) (predecessor to section 552.104 is not designed to protect interests of private parties that submit information to governmental body); 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, the submitted information must be released 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).

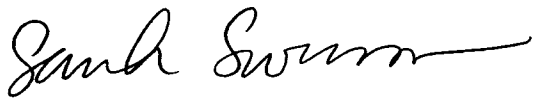
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 192179

Enc. Submitted documents

c: Mr. George W. Hebert, II
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Houston, Texas 77065
(w/o enclosures)