



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2005

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-07406

Dear Ms. Longoria:

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# 230333.

The University of Texas at Arlington (the "university") received a request for certain vendors' responses to a request for proposals for an enterprise business intelligence (reporting) tool. You take no position with respect to the public availability of the responsive information that you have submitted. You believe, however, that this information implicates the proprietary interests of Hyperion Solutions Corporation ("Hyperion"), iOLAP, Inc. ("iOLAP"), and SHI Government Solutions ("SHI"). You notified Hyperion, iOLAP, and SHI of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We also received correspondence from Hyperion. We have considered all of Hyperion's arguments and have reviewed the submitted information.

We initially note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

correspondence from either iOLAP or SHI. Thus, neither iOLAP nor SHI has demonstrated that any of their information is proprietary for the purposes of the Act. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address Hyperion's claim under section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common law right to privacy. Common law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Hyperion asserts that the release of client lists and client quotations contained in its information "would violate the privacy of those identified by client list or client quotation." We note, however, that common law privacy protects the interests of individuals, not those of corporations and other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), *see also U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Furthermore, the right of privacy is designed primarily to protect the feelings and sensibilities of human beings, rather than to safeguard property, business, or other pecuniary interests. *See* Open Records Decision No. 192 at 4 (1978). We therefore conclude that none of Hyperion's client information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

Hyperion also raises section 552.110(b) of the Government Code with respect to other portions of its information. Section 552.110(b) excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). This exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Hyperion asserts that the release of its product specifications, price lists, and services methodologies would cause the company substantial competitive harm. We conclude that the university must withhold some of Hyperion's pricing information under section 552.110(b). We have marked that information accordingly. We find that Hyperion has not demonstrated that any of the remaining information at issue is protected by section 552.110(b), and the university may not withhold any other information that relates to Hyperion on that basis. We note that the information to be released includes pricing information relating to a contract between Hyperion and another governmental body. Federal cases applying the analogous Freedom of Information Act exemption to prices in awarded

government contracts have denied protection for cost and pricing information, reasoning that disclosure of prices charged the government is a cost of doing business with the government. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000). Moreover, we believe that the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision Nos. 514 (1988), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Furthermore, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency).

Lastly, we note that some of the submitted information that must be released appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the university must withhold the marked information relating to Hyperion that is excepted from disclosure under section 552.110(b) of the Government Code; (2) the rest of the submitted information must be released; and (3) in releasing information that is protected by copyright, the university must comply with copyright law.

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).

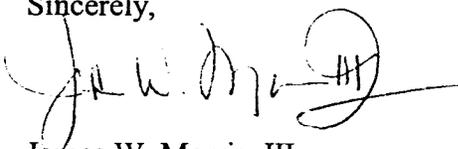
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 230333

Enc: Submitted documents

c: Mr. Billy Bob Brigmon
1224 Westwood Drive
Roanoke, Texas 76262
(w/o enclosures)

Ms. Dana K. Thibodeau
Hyperion Solutions Corporation
5450 Great America Parkway
Santa Clara, California 95054-3644
(w/o enclosures)

Mr. Christopher T. Jordan
iOLAP, Inc.
2591 Dallas Parkway, Suite 107
Frisco, Texas 75034
(w/o enclosures)

Ms. Adrienne Pubyalski
SHI Government Solutions
1250 Capital of Texas Highway South, Building One, Suite 350
Austin, Texas 78746
(w/o enclosures)