



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2005

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

OR2005-08945

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# 233430.

The University of Texas System (the "system") received a request for a copy of the winning bid proposal submitted in response to RFP number OGC033125005, as well as for the "scoring or tabulation of the winning response and the tabulation or scoring" of the requestor's company's response. The system states that it did not compile a bid tabulation for this RFP and does not possess information responsive to the second part of the request. The system takes no position with respect to the public availability of the winning bid proposal, which it has submitted. The system believes, however, that the submitted information may implicate the proprietary interests of ELM Exchange, Inc. ("ELM"). Thus, the system notified ELM of this request for information and of its right to submit arguments to this office as to why the information should not be released.¹ We have reviewed the submitted information. We have also reviewed comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any interested party may submit comments to this office stating why information should or should not be released).

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).

First, we address the requestor's comments concerning the system's statement that it does not possess information related to tabulation or scoring of the bids. The requestor asserts that he understands that the system utilized "some method or procedure . . . to pick the winner," and that method may have consisted of "a matrix of some sort." However, as noted, the system states that it has no responsive information regarding this portion of the request. Whether the system has information that is responsive to that portion of the current request is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Accordingly, we must accept the system's representation that it has no responsive information regarding this portion of the request.

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 correspondence from ELM. Thus, there has been no demonstration that any of the submitted information is proprietary for 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).

We note, however, that the submitted proposal contains a social security number. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the system must withhold the social security number contained in the submitted information under section 552.147.³ The remaining portions of the proposal 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

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

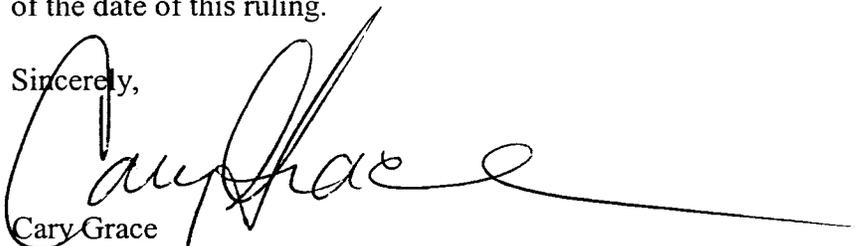
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/sdk

Ms. Carol Longoria - Page 4

Ref: ID# 233430

Enc. Submitted documents

c: Mr. James Trimboli
Web Head Group
1617 East Commerce, Suite 4101
San Antonio, Texas 78205
(w/o enclosures)

Ms. Jo-Ann Fiscina
ELM Exchange, Inc.
2 Loganwood Court
Rockville, Maryland 20852
(w/o enclosures)