



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2007

Ms. Talibah Young
Assistant General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2007-12287

Dear Ms. Young:

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# 289723.

The University of Houston (the "university") received a request for "a complete copy of bid tabulations and a copy of the award vendor's bid from [the university's] last awarded bid for gasoline and diesel fuel," and copies of four recent invoices for product delivered by the university's current vendors. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also claim that the requested information may contain the proprietary information of a third party. Although you take no position on the proprietary nature of the information, you state, and provide documentation showing, that you have notified Three L, Inc. ("Three L") of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 52.305(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 the applicability of exception to disclose under Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

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). As of the date of this decision, Three L has not submitted to this office any reasons explaining why its information should not be released. Therefore, Three L has provided us with no basis to conclude that it has a protected proprietary interest in any

of the submitted information. *See, e.g., id.* § 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. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the university may not withhold any portion of the submitted information on the basis of any proprietary interest Three L may have in the information.

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. The purpose of section 552.104 is to protect a governmental body’s interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990).

In this instance, the information at issue consists of a bid tabulation sheet and invitation to bid for a previously awarded contract, and invoices from the university’s current vendor. Normally, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978). Nevertheless, you argue that the release of the submitted information could impact future negotiations with other companies that enter into agreements with the university. We disagree, finding that the assertion that the release of the past bid tabulation sheet and invitation to bid might give a bidder an unfair advantage on future contracts is entirely too speculative. *See* Open Records Decision No. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Additionally, we find that you have not established that the university has a competitive interest that would be harmed by release of the submitted invoices. Therefore, we conclude that you have not demonstrated that public release of the submitted information would cause specific harm to the university’s interests in a competitive bidding situation. Accordingly, the university may not withhold any of the submitted information under section 552.104 of the Government Code. 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).

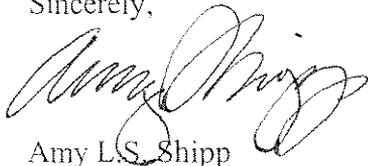
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 289723

Enc. Submitted documents

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