



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2008

Ms. Renee Byas
General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2008-15697

Dear Ms. Byas:

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# 327981.

The Houston Community College (the "college") received two requests from different requestors for information pertaining to a specified custodial services contract.¹ You state that you will provide the second requestor with information responsive to categories 2 through 5 of the September 30, 2008 request. You also state that you do not maintain any information responsive to a portion of the September 11, 2008 request.² You assert that a portion of the requested information is protected by copyright law. You also note that the information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, you notified AMB Janitorial Services; CFJ Maintenance, Inc.; JG&T Janitorial; Vanguard Resources; General Building Maintenance, Inc.; Marcis & Associates, Inc.; HBS National Corporation; and Custodial

¹We note the college received clarification regarding the September 11, 2008 request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Services of America of the college's receipt of the requests for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestors. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted bid proposals.

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 letter, we have not received comments from any third party explaining why their submitted bid proposals should not be released. Therefore, we have no basis to conclude any of the notified companies have protected proprietary interests in their submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the college may not withhold these companies' proposals on the basis of any proprietary interest they may have in them.

Next, we note that the submitted information contains bank account and insurance policy numbers.³ Section 552.136(b) of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." The college must withhold the bank account and insurance policy numbers we have marked under section 552.136.

Finally, we agree that portions of the submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990).

³The Office of the Attorney General will raise a mandatory exception, such as section 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the college must withhold the insurance policy numbers that we have marked under section 552.136. The remaining information must be released to the requestor in accordance with copyright law.⁴

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

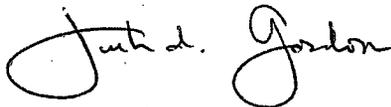
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

⁴We note that the submitted information contains a social security numbers. 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.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 327981

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)

ABM Janitorial Services
2131 Gulf Central Drive
Houston, Texas 77023
(w/o enclosures)

CTJ Maintenance, Inc.
3601 Conflans
Irving, Texas 75061
(w/o enclosures)

JG & T Janitorial
14622 Honeycomb
Cypress, Texas 77429
(w/o enclosures)

Vanguard Resources
1701 West Northwest Highway
Grapevine, Texas 76051
(w/o enclosures)

Marcis & Associated, Inc.
P.O. Box 11175
Spring, Texas 77391
(w/o enclosures)

General Building Maintenance, Inc.
3835 Presidential Parkway, Suite 200
Atlanta, Georgia 30340
(w/o enclosures)

Custodial Services of America
1409 Scott Street
Houston, Texas 77003
(w/o enclosures))

HBS National Corporation
1634 West Sam Houston Parkway North
Houston, Texas 77043
(w/o enclosures)