



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2009

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-02488

Dear Ms. Chatterjee:

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# 337230 (OGC # 116051).

The University of Texas System (the "university") received a request for "the bid documents submitted by the winning bidder for The University of Texas System for Selection of a Vendor to Provide Microsoft Program RFP No. SWIS20081015." Although the university takes no position on the release of the responsive information, you explain that it may contain proprietary information subject to exception under the Act. Accordingly, you have notified Dell Marketing ("Dell") and Microsoft Education Solutions Group ("Microsoft") 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. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Initially, we must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us that the university received the request for information on

December 10, 2008; however, we did not receive your request for a ruling until January 7, 2009. *See* Gov't Code § 552.301(b). Thus, the university failed to comply with the procedural requirements mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Because third party's interests may be at stake, we will address whether the submitted information must be withheld to protect the interests of either Dell or Microsoft.

We note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received any correspondence from either Dell or Microsoft. Accordingly, we have no basis to conclude that either of these parties has any protected proprietary interests in the responsive information. Thus, the university may not withhold any of the responsive information on that basis. *See 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. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

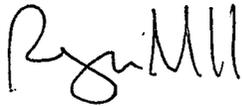
We note, however, that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See 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).

As the university raises no exception to disclosure, the university must release the information at issue to the requestor, but must comply with copyright law in so doing.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 337230

Enc. Submitted documents

cc: Dell Marketing
Attn: Ms. Staci McDonald
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Round Rock, Texas 78682
(w/o enclosures)

Microsoft Education Solutions Group
Attn: Mr. Fitz McPhaul
Stonebridge Plaza, Building One
9606 North Mopac Expressway, Suite 200
Austin, Texas 78759
(w/o enclosures)

Requestor
(w/o enclosures)