



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2009

Mr. Philip E. McCleery
Sheehy, Lovelace & Mayfield, P.C.
510 N. Valley Mills Drive, Suite 500
Waco, Texas 76710

OR2009-02963

Dear Mr. McCleery:

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# 336682.

McLennan Community College (the "college"), which you represent, received a request for the responses to Request for Proposal No. 07-10-123. You do not take a position as to whether the submitted information is excepted under the Act.¹ However, you state that release of this information may implicate the proprietary interests of ZogoTech and SAS Institute, Inc. ("SAS"). Accordingly, you inform us, and provide documentation showing, that you notified ZogoTech and SAS of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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). We have reviewed the submitted information.

¹ We note that although the college raises sections 552.101, 552.104, and 552.110 of the Government Code, the college makes no arguments regarding these exceptions. Therefore, we assume the college has withdrawn its claims that these sections apply to the submitted information.

Initially, you note that Zogotech's proposal is marked confidential and SAS's proposal provides that it only for the college and should not be disclosed to others. However, information is not made confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 479 (1987) (information is not confidential under Public Information Act simply because party submitting it anticipates or requests that it be kept confidential), 203 (1978) (mere expectation of confidentiality by individual supplying information does not properly invoke section 552.110). Consequently, the submitted information may not be withheld unless it falls within an exception to disclosure.

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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither ZogoTech nor SAS have submitted to this office any reasons explaining why the submitted information should not be released. Therefore, because we have received no arguments from ZogoTech or SAS, the college may not withhold any of the submitted information on their behalf.

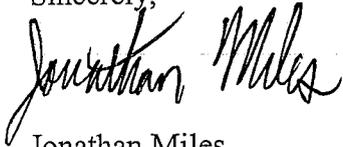
We note that portions of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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 you raise no further arguments against disclosure, the college must release the requested information, but any copyrighted information may only be released in accordance with copyright law.

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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 336682

Enc. Submitted documents

c: Requestor
(w/o enclosures)