



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2009

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2009-05758

Dear Mr. Meitler:

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# 342751 (TEA PIR# 10849).

The Texas Education Agency ("TEA") received a request for the winning proposal submitted in response to a specified RFP. Although you take no position as to the disclosure of the submitted proposal, you state that release of this information may implicate the proprietary interests of Edvance Research, Inc. ("Edvance"). You state, and provide documentation showing, you notified Edvance of the request and of its opportunity to submit comments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(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 comments received from Edvance and reviewed the submitted information.

Initially, we note that Edvance seeks to withhold certain information that was not submitted to this office by TEA. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by TEA. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. While Edvance generally asserts that portions of the submitted proposal

are confidential by law, it has not directed our attention to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, TEA may not withhold any portion of the submitted proposal under section 552.101 of the Government Code.

Edvance argues that portions of the submitted proposal are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This office has found that section 552.102 only applies to information in the personnel files of governmental employees. The information Edvance seeks to withhold is not contained in the personnel file of a governmental employee; therefore, section 552.102 is not applicable to this information and TEA may not withhold any portion of the submitted proposal on that ground.

Edvance argues that portions of the submitted proposal are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see* Open Records Decision No. 661 (1999).

Edvance asserts its submitted cost proposal represents pricing information subject to section 552.110(b). However, we note Edvance was the winning bidder in this instance. The pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 319 at 3 (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* ORD 514. Therefore, TEA may not withhold any portion of the submitted proposal under section 552.110(b) of the Government Code.

We note 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. 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). As no other exceptions to disclosure are raised, the submitted proposal must be released to the requestor; however, copyrighted portions of the information must 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 342751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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