



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2009-17515

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 363820 (PIR No. 09-26171).

The Office of the Attorney General (the "OAG") received a request for the Pricing Submission Forms bidders submitted in response to Bid Reference No. 302-0-0072. The OAG takes no position as to disclosure of the information. Rather, because release of the information may implicate the proprietary interests of the respondents, the OAG notified the bidders of the request and of their right to submit arguments to this office as to why their information should not be released. Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).

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, only Merrill Corporation ("Merrill") and Chandler & Company, LLC ("Chandler") have submitted arguments to protect their pricing information. Because the remaining bidders have not submitted to this office any reasons explaining why their information should not be released, we have no basis to conclude release of the information will harm their proprietary interests. *See* Gov't Code § 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 OAG may not withhold the pricing information of bidders who have not submitted arguments to this office based on any proprietary interests they may have.

Next, we consider Merrrill's and Chandler's arguments to withhold their pricing information under section 552.110 of the Government Code. Section 552.110(b) protects the property interests of private persons by excepting from disclosure commercial 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. The interested third party raising this exception must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

After reviewing the information at issue and Merrill's and Chandler's arguments, we conclude the companies have demonstrated release of their pricing information would result in substantial competitive harm to them for purposes of section 552.110(b). Thus, the OAG must withhold Merrrill's and Chandler's Pricing Submission Forms. Because section 552.110(b) is dispositive, we do not address their other arguments.

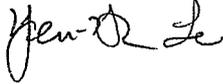
In summary, the OAG must withhold Merrrill's and Chandler's Pricing Submission Forms under section 552.110(b). The OAG must release the remainder.

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, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 363820

Enc: Submitted documents

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