



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2010

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

OR2010-02093

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# 370041.

The University of Texas at Dallas (the "university") received a request for documents showing "the rates submitted by all the vendors" and copies of the winning vendors' proposals pertaining to a specified request for proposals. Although you take no position on whether the information at issue is excepted from disclosure, you state its release may implicate the proprietary interests of certain third parties. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the university has notified the interested third parties of the request and of their right to submit arguments to this office explaining why their information should not be released.¹ See Gov't

¹The interested third parties are: Asset Performance Group; National Enterprise Systems Inc.; Progressive Financial Services Inc.; Southwest Credit; Todd, Bremer & Lawson; Universal Fidelity LP; S & S Recovery; Coast Professional Inc.; Williams & Fudge Inc. ("W & F"); Gila Corporation/MSB; Gold Key Credit; NCO Group Inc.; National Credit Management ("National Credit"); Creditwatch Services Ltd.; Immediate Credit Recovery Inc.; Continental Service Group ("Conserve"); Creditors Interchange; Enterprise Recovery Systems ("Enterprise"); and Windham Professional, Inc. ("Windham").

Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception to disclosure in certain circumstances). You state W & F, National Credit, Todd, Bremer & Lawson, and Conserve, the winning vendors, do not object to release of their proposals or rate information. You further state Creditors Interchange and Enterprise do not object to release of their rate information. We have received comments from a representative of Windham. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, that the university failed to comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information that overcomes the presumption of openness. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake, or when information is confidential by law. *See* Open Records Decision No. 150 (1977). Because the proprietary interests of third parties are at stake, we will consider the submitted arguments against disclosure.

Next, we note that Windham argues to withhold from public disclosure only information that the university did not submit. This ruling does not address information that was not submitted by the university and is limited to the information submitted as responsive by the university. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any of the other third parties. Thus, because these third parties have not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the university may not withhold any of the information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Finally, we note that some of the remaining information appears 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. 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). Therefore, the submitted information must be released to the requestor, but any information that is protected by copyright 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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 370041

Enc: Submitted documents

cc: Requestor
(w/o enclosures)

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