



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2010

Ms. Neera Chatterjee  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 787401-2902

OR2010-02866

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# 371257.

The University of Texas Health Science Center at Houston (the "center") received a request for copies of contracts, memorandums of understanding, and written agreements with Macmillan/McGraw-Hill (MGH) companies since 2007 and documents and correspondence surrounding the termination of contracts, licensing, and/or royalty agreements between MGH and the center.<sup>1</sup> You state the center is releasing some of the requested information. The center takes no position on whether the submitted information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of MGH. Accordingly, you inform us, and provide documentation showing, that you notified MGH of the request and of its right to submit arguments to this office as to why its 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

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<sup>1</sup>You inform us that the requestor agreed to the redaction of any bank account numbers and bank routing numbers in the responsive information. We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

disclosure under certain circumstances). We received correspondence from MGH.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

We understand MGH to claim that its information in the submitted contract, including royalty rates, minimum sales figures, inventory levels, and pricing, is excepted under section 552.110(b) of the Government Code. Section 552.110(b) excepts “[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[.]” Gov’t Code § 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.*; *see also* Open Records Decision No. 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).

Upon review of MGH’s arguments and the information at issue, we find that MGH has made only conclusory allegations that the release of its information would result in substantial damage to its competitive position. Thus, MGH has not demonstrated that substantial competitive injury would result from the release of any of the submitted information. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Furthermore, we note that the pricing information contained in a contract with a governmental body, such as the contract at issue, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *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, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8

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<sup>2</sup>Although MGH indicates its information is excepted from disclosure under sections 552.101, 552.113, and 552.131 of the Government Code, it has provided no arguments in support of these exceptions. Therefore, we assume MGH no longer asserts these exceptions. *See* Gov’t Code §§ 552.301, .302. Furthermore, although MGH also claims that the requested information is excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person’s privacy or property interests may be involved. *See id.* § 552.305(a); ORD 542 at 1-3 (discussing statutory predecessor).

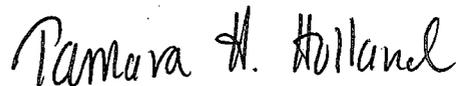
(1990) (public has interest in knowing terms of contract with state agency). Accordingly, no portion of the submitted information may be withheld under section 552.110(b).

Finally, we note that the requestor seeks the information at issue in electronic format. Section 552.228 of the Government Code requires that a governmental body provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *See* Gov't Code § 552.228(b)(1), (2). You do not inform us that the center lacks the technological capability to provide the information in that requested electronic format. Accordingly, if the center has the technological capability to provide the information at issue in the requested electronic format, it must do so; if the center does not have the technological capability, it may release the requested information in the submitted paper format.

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](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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 371257

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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