



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Mr. R. Brooks Moore
Assistant General Counsel
Texas A&M University
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-10218

Dear Mr. Moore:

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# 386201 (TAMU 10-186).

Texas A&M University (the "university") received a request for the proposal from Kroll Security Group, Inc. ("Kroll") and the evaluation score sheets for all proposing firms relating to the university's Master Security Plan RFP Main 10-0007. You state you will release the requested evaluation score sheets to the requestor. Although you take no position with respect to the public availability of the remaining requested information, you state that release of this information may implicate the proprietary interests of Kroll. Accordingly, you inform us, and provide documentation showing, pursuant to section 552.305 of the Government Code, the university has notified Kroll of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (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 in certain circumstances). Pursuant to section 552.305(d), we have received comments from Kroll objecting to the release of portions of its information. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Kroll argues against the disclosure of more information than was submitted for review by the university. Accordingly, this ruling will only address the information that the university submitted to this office. See Gov't Code § 552.301(e)(1)(D).

We understand Kroll to assert that its payee identification number and vendor identification number are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. 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. This section encompasses information protected by other statutes. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), aff'd in part, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find Kroll has failed to demonstrate its payee identification number or vendor identification number fall within the definition of "return information" under section 6103(b)(2). Therefore, these numbers are not confidential under section 6103(a), and the university may not withhold them under section 552.101 on that basis.

Next, Kroll argues portions of its information 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[.]" 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) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find Kroll has established that release of some of its customer information would cause the company substantial competitive harm. Therefore, the university must withhold the information we have marked under section 552.110(b) of the Government

Code. However, we note Kroll has made some of the client information it seeks to withhold publicly available on its website. Because Kroll has published this information, it has failed to demonstrate that release of this information would cause the company substantial competitive injury. Additionally, we find Kroll has failed to provide specific factual evidence demonstrating that release of any of its remaining information at issue would result in substantial competitive harm to its interests. *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), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Furthermore, the university informed us that Kroll was the winning bidder in this instance. Although Kroll argues against disclosure of its pricing information, we note this office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *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). Accordingly, none of the remaining information at issue is excepted from disclosure under section 552.110(b) of the Government Code.

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 (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).

In summary, the university must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/tp

Ref: ID# 386201

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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