



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2010

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

OR2010-11192

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# 389025.

The University of Texas System (the "university") received a request for proposals submitted to the university in response to a specified request for proposals. Although you take no position as to the disclosure of the submitted proposals, you state release of this information may implicate the proprietary interests of TALX Corp. ("TALX") and ADP National Account Services ("ADP"). You state, and provide documentation showing, you notified these companies of the request and of their opportunity to submit comments to this office as to why the submitted 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 submitted by TALX and reviewed the submitted information.

Initially, we note 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, we have not received comments from ADP explaining why its submitted proposal should not be released. Therefore, we have no basis to conclude ADP has a protected proprietary interest in its submitted information. *See id.* § 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). Consequently, the university may not withhold ADP's proposal on the basis of any proprietary interest it may have in the information.

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 TALX generally asserts portions of its proposal are subject to section 552.101, 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, the university may not withhold any portion of the submitted information under section 552.101 of the Government Code.

Based on the submitted comments, we understand TALX to raise 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.*; ORD 661.

TALX contends that various portions of its proposal contain commercial and financial information, the release of which would cause TALX substantial competitive harm. Upon review, we find TALX has established its customer information, which we have marked, constitutes commercial or financial information, the release of which would cause TALX substantial competitive injury. Accordingly, the university must withhold the information we have marked under section 552.110(b) of the Government Code. We find, however, TALX has made only general conclusory assertions that release of the remaining information at issue would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See generally* Open Records Decision Nos. 661, 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), 319 at 3 (1982) (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, we note TALX was the winning bidder in this instance. The pricing information of a winning bidder 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

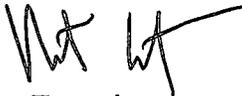
of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Therefore, the university may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the university must withhold the information we marked under section 552.110(b) of the Government Code. As no further exception to disclosure has been raised, the remaining information must be released.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 389025

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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