



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2010

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

OR2010-11763

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# 389158 (TAMU 10-230).

Texas A&M University (the "university") received a request for the following information related to request for proposal TEEX 09-0034 for an automated cashiering-receipting system: (1) the winning submitted proposal; and (2) information revealing the university's scoring for the winning proposal and the proposal submitted by the requestor's company.¹ You state the university has released the requested scoring information. Although you take no position as to the public availability of the submitted winning proposal, you state release of this information may implicate the proprietary interests of CASHNet. Thus, pursuant to section 552.305 of the Government Code, you notified CASHNet of the request and of the company's right to submit arguments to this office as to why its information should not be released. 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 applicability of exception to disclosure under the Act in certain circumstances). We have reviewed the submitted information and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that

¹Although the requestor also asks the university to verbally debrief him on the strong and weak aspects of the proposal submitted by his company, we agree with the university that such a request is outside the scope of the Act.

interested party may submit comments stating why information should or should not be released).

We first address the requestor's claim that the university failed to comply with section 552.301 in requesting a ruling from this office. The requestor claims his request for information should be considered received by the university for purposes of the Act on the date he sent the request via e-mail to the university employee charged with answering questions about the request for proposal at issue, not on the date he sent it via e-mail to the university's designated public information coordinator. A governmental body's duty to request a ruling from the attorney general arises only after it receives a written request for information. *Id.* § 552.301(a). Section 552.301(c) of the Government Code provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." *Id.* § 552.301(c). Thus, the first e-mail that the requestor sent, which was not sent to the university's public information officer, was not a valid "written request" for purposes of the Act. Further, the recipient of this first e-mail properly directed the requestor to the officer for public information or that person's designee for the proper submission of his e-mail request for information. Consequently, we find the university did not violate the procedural requirements of the Act in requesting a decision from this office. *See generally id.* § 552.301 (enumerating the responsibilities a governmental body incurs upon receipt of a written request for information that it wishes to withhold).

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CASHNet explaining why any portion of its submitted proposal should not be released. Therefore, we have no basis to conclude CASHNet has any protected proprietary interest in the 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), 542 at 3 (1990). Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interest CASHNet may have in the information.

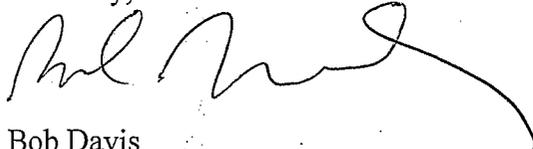
However, the submitted proposal contains information protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection 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). Accordingly, the submitted proposal must be released to the requestor, but any information protected by copyright must 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 389158

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Dan Walton
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(w/o enclosures)