



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2010

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

OR2010-12861

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# 391559 (OGC# 130846).

The University of Texas at Arlington (the "university") received a request for bid packages submitted by companies that participated in the university's request for proposal number 2010-003. You state the university will redact social security numbers pursuant to section 552.147 of the Government Code and insurance policy numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of the interested third parties. Accordingly, you provide documentation showing that you notified Commonwealth Engineering and Construction, L.L.C. ("Commonwealth") and S&B Infrastructure, Ltd. ("S&B") of the request and of their right to submit arguments to this office as to why their proposals should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining 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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. Additionally, this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

have received comments from Commonwealth. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of a 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 any comments from S&B explaining why its information should not be released. Therefore, we have no basis to conclude S&B has a protected proprietary interest in its 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. Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interest S&B may have in this information.

Commonwealth raises section 552.101 of the Government Code for portions of its submitted information. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101; *see* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Commonwealth asserts some of its information implicates privacy interests. Common-law privacy is encompassed by section 552.101 of the Government Code and protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. We note that names, addresses, telephone numbers, educational history and work background of individuals are not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (names and addresses are not protected by privacy). Upon review, we find Commonwealth has not demonstrated that any of the information at issue is intimate or embarrassing and of no legitimate public interest. Although Commonwealth generally asserts a portion of its submitted information is confidential by law, Commonwealth has not directed our attention to, nor are we aware of, any law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, we conclude the university may not withhold any of Commonwealth's information under section 552.101 of the Government Code.

Next, Commonwealth 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

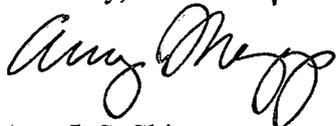
issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find Commonwealth has failed to provide specific factual evidence demonstrating that release of any of its 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 (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 Commonwealth was the winning bidder in this instance. Although Commonwealth 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 information at issue is excepted from disclosure under section 552.110(b) of the Government Code. As no further exceptions to disclosure are raised, the submitted information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 391559

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Harold J. Reddish
S&B Infrastructure LTD
3535 Sage Road
Houston, Texas 77056
(w/o enclosures)

Mr. Donald F. Coleman
Commonwealth Engineering Construction
10255 Richmond, Suite 200
Houston, Texas 77042
(w/o enclosures)