



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-17409

Dear Mr. Nolan:

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# 400310 (CPA ORTS# 6583563435).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for copies of the bid tabulations and evaluations for all respondents to Request for Proposals No. 946-A1, pricing attachments for all respondents, and the final proposal response and contract executed by Citibank. You state you will release some of the responsive information to the requestor. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of interested third parties. Accordingly, you have notified Citibank and BMO Financial Group ("BMO") of the request and of their right to submit arguments to this office as to why their 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 disclosure under certain circumstances). We have received correspondence from BMO. We have considered BMO's arguments and reviewed the submitted information.

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 Citibank. Therefore, we have no basis to conclude Citibank 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), 542 at 3. Accordingly, the comptroller may not withhold the submitted information on the basis of any proprietary interest Citibank may have. We will, however, consider arguments raised by BMO under section 552.110 of the Government Code.

Next, we note that BMO seeks to withhold certain information that the comptroller has not submitted to this office for our review. Because some of the information that BMO seeks to withhold was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted by the comptroller. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Thus, we will only address BMO's arguments against disclosure of the information that was actually submitted to this office for our review.

BMO raises section 552.110(b) for its pricing information. 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 (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 the BMO's arguments and the information at issue, we find that BMO has established that the pricing information we have marked in the submitted information constitutes commercial or financial information, the release of which would cause BMO substantial competitive harm. Therefore, the comptroller must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find that BMO has failed to demonstrate how any portion of its remaining information constitutes pricing information, the release of which would cause it substantial competitive harm. Therefore, none of BMO's remaining information may be withheld under section 552.110 of the Government Code. As no further exceptions to disclosure have 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 400310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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