



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 1, 2010

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

OR2010-17947

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# 401681 (TAMU 10-452).

Texas A&M University-Texarkana (the "university") received a request for information pertaining to proposals submitted in response to RFP Main 10-0016 for commencement photography and "the total dollar amount received as a rebate/commission" for a specified commencement ceremony. You state you will provide some responsive information to the requestor. Although you take no position on whether the submitted proposals are excepted from disclosure, you state release of this information may implicate the proprietary interests of Candid Campus Photography, Inc. ("Candid"); Eclipse Photography ("Eclipse"); Grad Images ("Grad"); and Ultimate Exposures, L.L.C. ("Ultimate"). Accordingly, you have notified these third parties 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 comments from Ultimate. We have considered the claimed exception and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Candid, Eclipse, or Grad. Thus, none of these third parties have demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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). Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests Candid, Eclipse, or Grad may have in the information.

Ultimate raises section 552.110(b) of the Government Code, which 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) (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 Ultimate's arguments and the information at issue, we find that Ultimate has established that the release of portions of its customer list would cause the company substantial competitive injury. However, Ultimate has published the identities of some of its customers on its website, making this information publicly available. Thus, Ultimate has failed to demonstrate that release of the information it has published on its website would cause it substantial competitive injury. Further, we find that Ultimate has made only conclusory allegations that the release of the remaining information at issue would result in substantial damage to its competitive position. Thus, Ultimate has not demonstrated that substantial competitive injury would result from the release of any of its remaining information. *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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitive unfair advantage on future contracts is too speculative). Accordingly, no portion of Ultimate's remaining information may be withheld under section 552.110(b). Accordingly, the university must withhold the portions of Ultimate's customer list that we

have marked under section 552.110(b) of the Government Code. The remaining 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 401681

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Lewisville, Texas 75029
(w/o enclosures)

Mr. Steven Montgomery
Grad Images
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(w/o enclosures)

Mr. Joey Fasullo
Candid Campus Photography, Inc.
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Mr. Chris Svatek
Eclipse Photography
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(w/o enclosures)