



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Ms. Talibah Young
Assistant General Counsel
University of Houston System
311 Ezekiel Cullen Building
Houston, Texas 77204

OR2010-18399

Dear Ms. Young:

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# 402406.

The University of Houston (the "university") received a request for 65 categories of information pertaining to campus parking availability during a specified time period, as well as planning, construction, and revenue records regarding a specified parking garage. You indicate the university does not have any information responsive to six of the categories of information.¹ You state the university has provided most of the requested information to the requestor. Although you state the university takes no position with respect to the public availability of the remaining requested information, you state its release may implicate the proprietary interests of E. E. Reed Construction, L.P. ("E. E. Reed") and Powers Brown Architecture ("PBA"). Accordingly, you state, and provide documentation showing, the university notified these companies of the request and of each company's right to submit arguments to this office as to why the submitted bid 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 have received comments from PBA and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 E. E. Reed explaining why its submitted information should not be released. Therefore, we have no basis to conclude E. E. Reed has protected proprietary interests 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. Consequently, the university may not withhold any of E. E. Reed's submitted information on the basis of any proprietary interests E. E. Reed may have in the information. As no exceptions to disclosure have been claimed for this information, it must be released.

PBA indicates its submitted architectural drawings are excepted under 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; ORD 661 at 5-6.

Upon review of PBA's comments and submitted information, we find PBA has made only general conclusory assertions that release of its architectural drawings would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *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 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). Consequently, none of PBA's submitted information may be withheld under section 552.110(b) of the Government Code.

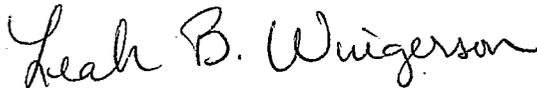
PBA also claims its submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. Thus, as PBA has not claimed any other exceptions to disclosure, its submitted information must be

released, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 402406

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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