



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

Ms. Ruth E. Shapiro
Assistant General Counsel
University of Houston System
311 Ezekiel Cullen Building
Houston, Texas 77204-2028

OR2011-00400

Dear Ms. Shapiro:

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# 405331.

The University of Houston System (the "system") received a request for electronic correspondence between the system and Rice University ("Rice") pertaining to the purchase of the KRTU radio transmitter and license, including any contracts, agreements, memorandums of understanding, or asset purchase agreements.¹ You state the system has released some of the requested information. You also state the system has redacted e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure

¹You explain, and provide documentation showing, the following sequence of events resulted in the present request: (a) the system received the original request on August 25, 2010; (b) the system provided the requestor with an estimate of charges and requested a deposit on September 7, 2010, pursuant to section 552.2615 of the Government Code; (c) the requestor clarified his request on September 17, 2010, in response to the first cost estimate; (d) on October 1, 2010, the system provided the requestor with a second estimate of charges based upon the clarified request and requested a deposit; (e) in response to the second cost estimate, the requestor narrowed his request on October 14, 2010, to include only one category of information; and (f) the system received a deposit for the information responsive to the one category of information on October 18, 2010. *See* Gov't Code §§ 552.2615, .263(a). Thus, October 18, 2010, is the date on which the system is deemed to have received the present request. *Id.* § 552.263(e).

²Open Records Decision No. 684 is a previous determination issued to all governmental bodies, which authorizes withholding of ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

under sections 552.104, 552.105, and 552.111 of the Government Code. Additionally, you state release of portions of the submitted information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you notified Public Radio Capital ("PRC") and Rice 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); *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 Act in certain circumstances). We have received comments from a representative for PRC. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, we note the requestor specifically limited his request to electronic correspondence between the system and Rice. Thus, to the extent any of the submitted information does not consist of electronic correspondence between the system and Rice, it is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system is not required to release that information in response to the request.

Next, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-18556 (2010). In this ruling, we concluded the system must withhold certain marked information pursuant to the following provisions: section 552.101 of the Government Code in conjunction with common-law privacy; section 552.136 of the Government Code; and section 552.137 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2010-18556 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude the system must continue to rely on Open Records Letter No. 2010-18556 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.105 of the Government Code excepts from disclosure information relating to the following:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information pertaining to such negotiations that is excepted from disclosure under section 552.105 may be withheld so long as the transaction relating to the negotiations is not complete. *See* ORD 310. Under section 552.105, a governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position in regard to particular transactions is a question of fact. Thus, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

You assert the responsive information pertains to the valuation of the license and signal of KTRU, appraisals of KTRU and the related real property, and proposed business plans for KTRU, all of which were used to determine the feasibility of the acquisition of the station by the system from Rice. You state that this information pertains to a sale that has not yet been completed. Although Rice and the system have signed an initial agreement, you state that the transaction is not yet final. You explain that the public comment period for the assignment of KTRU's Federal Communications Commission license is currently in effect and that the Texas Higher Education Coordinating Board has not yet approved the transaction. Further, you state the system has made a good faith determination that release of the responsive information will impair the system's position in this transaction. Accordingly, we conclude the system may withhold the responsive submitted information under section 552.105 of the Government Code.⁴

In summary, the system must rely upon Open Records Letter No. 2010-18556 as a previous determination and release or withhold the identical information in accordance with that ruling. The system may withhold the responsive submitted information under section 552.105 of the Government Code.

⁴As our ruling is dispositive, we need not address the system's or PRC's remaining arguments against disclosure of this information.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JLU/dls

Ref: ID# 405331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Crigler
Garvey Schubert Barer
1000 Potomac Street NW, Fifth Floor
Washington, D.C. 20007-3501
(w/o enclosures)

Mr. Richard A. Zansitis
Vice President and General Counsel
Rice University
MS 94
P.O. Box 1892
Houston, Texas 77251-1892
(w/o enclosures)