



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2011

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-08056

Dear Ms. Angadicheril:

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# 419770 (OGC# 136314).

The University of Texas Medical Branch at Galveston (the "university") received a request for recent pricing information for products provided by the following companies: Stryker, CMF ("Stryker"); Biomet Microfication ("Biomet"); and Synthes, CMF ("Synthes"). You state the university does not maintain information related to Biomet or Synthes.¹ 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 Stryker and Novation Company ("Novation"). Accordingly, you have notified both Stryker and Novation 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 reviewed the submitted information.

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time 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).

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 Stryker or Novation. Thus, Stryker and Novation have not 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. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests Stryker or Novation may have in the information. As no exceptions to disclosure have been raised, the submitted 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# 419770

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Portage, Michigan 49002
(Third party w/o enclosures)

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Novation Company
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125 East John Carpenter Freeway
Irving, Texas 75068
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