



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2011-09733

Dear Mr. Bentley:

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# 423685.

The University of Houston (the "university") received a request for the bid tabulation for request for proposals number 730-CMR Health. 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 D.E. Harvey Builders ("Harvey"), Gilbane Building Company ("Gilbane"), Hensel Phelps Construction Company ("Hensel Phelps"), and Turner Construction Company ("Turner"). 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 Hensel Phelps. We have 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 Harvey, Gilbane, or Turner. Thus, Harvey, Gilbane, and Turner 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 Harvey, Gilbane, and Turner may have in the information. We will, however, consider Hensel Phelps' arguments against disclosure.

Initially, we note Hensel Phelps seeks to withhold information that the university has not submitted for our review because it is not responsive to the instant request for information. This ruling does not address information beyond what the university has submitted to us for review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for information. *See id.*

Hensel Phelps raises section 552.110(b) of the Government Code. 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[.]" *Id.* § 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.

Upon review of Hensel Phelps' arguments under section 552.110(b), we find that Hensel Phelps has established that its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, the university must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find that Hensel Phelps has made only conclusory allegations that the release of any of its remaining information would result in substantial damage to the company's competitive position. Thus, Hensel Phelps has not demonstrated that substantial competitive injury would result from the release of any of its remaining information at issue. *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 competitor unfair advantage on future contracts is too speculative). Accordingly, none of Hensel Phelps' remaining information may be withheld under section 552.110(b). As no further exceptions against disclosure are 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# 423685

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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