



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

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

OR2011-17145

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# 436758.

The University of Houston (the "university") pricing proposals and clarification submittals pertaining to two specified university building projects. 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 Austin Commercial; Hoar Construction, LLC; SpawGlass Construction Corporation; Turner Construction Company; and Hensel Phelps Construction Company ("Hensel Phelps"). 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 and considered the submitted arguments.

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 only received correspondence from Hensel Phelps. Thus, the remaining third parties have not demonstrated that they have a protected proprietary interests in any of their 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 any of submitted information on the basis of any proprietary interests the remaining third parties may have in their information. However, we will consider Hensel Phelps's arguments against disclosure under section 552.110 of the Government Code.

Section 552.110(b) of the Government Code 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 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.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

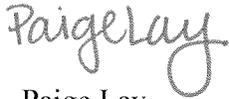
Hensel Phelps claims portions of its submitted information are excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we find Hensel Phelps has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Accordingly, the university must withhold this information, which we have marked, under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 436758

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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