



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2011

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

OR2011-17758

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# 438047.

The University of Houston – Downtown (the "university") received two requests for proposals submitted for a specified university institutional branding project.<sup>1</sup> Specifically, the first requestor requests any information related to the winning proposal submitted by Richards/Carlberg, while the second requestor requests all proposals submitted for the specified university institutional branding project. 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 Richards/Carlberg, 97 Degrees West, Advantage Communications, Bullpen Marketing, Stacey M. Poehler, Creosote Affects, Freeman Leonard, Hahn, Texas, Insight Marketing Design, Keystone Resources, Limb Design, Marion Montgomery, Inc., Pennebaker, Pierpont Communications, The Price Group, Inc., Savage Design Group, Inc. ("Savage"), Stamats, Travers Collins, TWG Plus and Yaffe Deuster. Accordingly, you have notified these third parties of the requests 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

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<sup>1</sup>We note the first request was received by the university on September 16, 2011 and the second request was received on October 7, 2011. For purposes of this ruling, the requestor whose request was received on September 16 will be referred to as the "first requestor," while the requestor whose request was received on October 7 will be referred to as the "second requestor."

third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Savage. We have considered the submitted arguments and reviewed the submitted information.

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 Savage. Thus, the remaining third parties have not demonstrated 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 the remaining third parties may have in the information. We will, however, consider Savage's arguments against disclosure.

Initially, we note that Savage provided to this office, and only argues to withhold, a document entitled "Proposal" dated June 22, 2011. However, the university has not submitted this information to our office for review. This ruling does not address information beyond what the university has submitted to us for review, and is limited to the information the university submitted as responsive to these requests for information. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). As Savage has not submitted arguments against disclosure of any of the information submitted by the university, the university may not withhold any information on the basis of Savage's arguments, with the following exception. We note that certain pricing information contained in a section of the document submitted by Savage entitled "Budget & Schedule" is also contained in the information pertaining to Savage submitted by the university as responsive to the request. Accordingly, we will address Savage's argument for withholding this information.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b).

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[.]" Gov't Code § 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* ORD 661 at 5.

Savage argues that certain information relating to pricing is protected under section 552.110(b) of the Government Code. Upon review, we find the pricing information pertaining to Savage, which we have marked, constitutes commercial or financial information, the disclosure of which would cause substantial competitive harm to Savage. Accordingly, the university must withhold the information we have marked under section 552.110(b) of the Government Code.

Finally, we note some of the materials at issue are 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.

In summary, the university must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining responsive information must be released to the respective requestors, but any copyrighted information may only 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](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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 438047

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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