



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2011

Ms. Anamaria Rubinstein Palla  
Senior Assistant General Counsel  
The University of Houston  
311 E Cullen Building  
Houston, Texas 77204-2028

OR2011-17783

Dear Ms. Palla:

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# 437739.

The University of Houston (the "university") received a request for the contract, bid tabulations, and other information pertaining to the current Construction Audit Services contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, you state, and provide documentation showing, you notified CCM Consulting Group ("CCM"); Clifton Gunderson, L.L.P. ("Clifton"); Commercial Cost Controls ("Commercial"); Daylight Forensic & Advisory ("Daylight"); Faithful+Gould ("Faithful"); KPMG, LLP ("KPMG"); Mayer, Hoffman, McCann, P.C. ("Mayer"); Mir Fox & Rodriguez ("Mir"); and Weaver and Tidwell, L.L.P. ("Weaver") of the request for information and of their rights to submit arguments to this office as to why their submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received correspondence from KPMG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CCM, Clifton, Commercial, Daylight, Faithful, Mayer, Mir, or Weaver explaining why the submitted information should not be released. Therefore, we have no basis to conclude either CCM, Clifton, Commercial, Daylight, Faithful, Mayer, Mir, or Weaver has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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 the submitted information on the basis of any proprietary interest CCM, Clifton, Commercial, Daylight, Faithful, Mayer, Mir, or Weaver may have in the information.

Next, we note KPMG argues against the release of information that was not submitted by the university. Our ruling is limited to the information the university has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

KPMG asserts portions of its information are protected by 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[.]" 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* Open Records Decision No. 661 at 5 (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).

KPMG argues portions of its information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find KPMG has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the university must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find KPMG has made only conclusory allegations that the release of any of its remaining information would result in substantial harm to its competitive position. *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 KPMG's remaining information may be withheld under section 552.110(b).

In summary, the university must withhold the information we have marked under section 552.110(b) of the Government Code. 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 437739

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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