



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Mr. Dan H. Curlee
Counsel for Weatherford College
Eggleston Flowers & King
102 Houston Avenue
Weatherford, Texas 76086

OR2012-08404

Dear Mr. Curlee:

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# 455430.

Weatherford College (the "college"), which you represent, received a request for the proposals submitted by losing bidders in response to RFP 01-11. You claim the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You indicate the release of the submitted information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you were required to notify interested third parties of the request and of their opportunity to submit comments to this office explaining why the submitted information should be withheld from disclosure.¹ *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹The interested third parties are Follet Higher Education Group and Barnes & Noble College Booksellers, Inc.

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5.

You state the submitted information consists of the proposals submitted by the unsuccessful competitive bidders in response to RFP 01-11. Thus, the submitted information does not pertain to a currently competitive bidding situation. You argue release of the submitted information would limit the college’s ability to obtain “meaningful information from prospective bidders for goods [or] services” and “materially compromise” the college’s competitive procurement process. However, you have not explained, or otherwise demonstrated, how release of the submitted information would harm the college’s interests in a particular competitive situation. Further, you have not explained or demonstrated the submitted information pertains to the solicitation of bids for the same or similar goods or services on a recurring basis. Therefore, we find you have failed to demonstrate release of the information at issue would cause specific harm to the college’s marketplace interests. Consequently, the college may not withhold the submitted under section 552.104 of the Government Code.

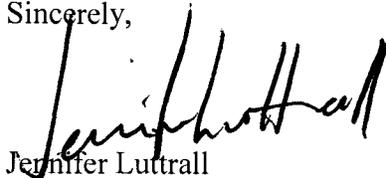
Although the college argues the requested information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the college’s argument under section 552.110. We note 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 Follet Higher Education Group or Barnes & Noble College Booksellers, Inc. explaining why their information should not be released. Therefore, we have no basis to conclude Follet Higher Education Group or Barnes & Noble College Booksellers, Inc. 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 college may not withhold any of the information at issue on the basis of any proprietary interest Follet Higher Education Group or Barnes & Noble College Booksellers, Inc. may have in it. As you raise no further exceptions to disclosure, the college must release the submitted information.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 455430

Enc. Submitted documents

c: Requestor
(w/o enclosures)