



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2012

Ms. Ruth E. Shapiro  
Senior Assistant General Counsel  
University of Houston System  
311 E Cullen Building  
Houston, Texas 77204-2028

OR2012-08718

Dear Ms. Shapiro:

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# 455688.

The University of Houston (the "university") received a request for eight categories of information pertaining to the university's compliance activities concerning SB 982 (2005) Energy Efficiency in Public Buildings, for a specified period of time.<sup>1</sup> You state you have released some of the requested information to the requestor. Although you take no position on whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of the following third parties: HADP Architecture, Inc., Bury + Partners Inc., E&C Engineers & Consultants, Inc., Page Southerland Page, LLP, Bailey Architects Inc., and Shah Smith & Associates, Inc. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why the information at issue 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)

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<sup>1</sup>You inform us the university provided the requestor with an estimate of charges and a request for a deposit for payment of those charges on March 7, 2012. *See* Gov't Code §§ 552.2615, .263(a). You state the university received a deposit for payment of the anticipated costs on March 19, 2012. Thus, March 19, 2012 is the date on which the university is deemed to have received this request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date the governmental body receives deposit or bond).

(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 the circumstances). We have reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it was created outside the date range specified by the requestor. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release non-responsive information in response to the request.

You state the university sought clarification of part of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You do not indicate whether the university received a response to the request for clarification. Thus, for the portion of the requested information for which you have sought but have not received clarification, we find the university is not required to release information in response to that portion of the request. However, if the requestor clarifies that portion of the request for information, the university must seek a ruling from this office before withholding any responsive information from the requestor. *See id.*

We note that an interested 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 any of the interested third parties. Thus, none of these interested third parties have demonstrated that it has 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 these third parties may have in the information.

We note some of the information at issue may be 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. As no exceptions to disclosure have been raised, the university must release the submitted information 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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 455688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Bill Brown  
HADP  
201 Alhambra Circle, Suite 800  
Coral Gables, Florida 33134  
(w/o enclosures)

Mr. David W. Douhit  
Bury & Partners  
221 West Sixth Street, Suite 600  
Austin, Texas 78701  
(w/o enclosures)

Mr. Elliot Millican  
E&C Engineers & Consultants, Inc.  
1010 Lamar, Suite 650  
Houston, Texas 77002  
(w/o enclosures)

Mr. Jeffrey Ewin  
Page Southerland Page, LLP  
1100 Louisiana, Suite One  
Houston, Texas 77002  
(w/o enclosures)

Mr. Mike Huszka  
Page Southerland Page, LLP  
1100 Louisiana, Suite One  
Houston, Texas 77002  
(w/o enclosures)

Mr. Ray D. Leiker  
Bailey Architects  
55 Waugh Drive, Suite 450  
Houston, Texas 77001  
(w/o enclosures)

Mr. Robert Owens  
Page Southerland Page, LLP  
1100 Louisiana, Suite One  
Houston, Texas 77002  
(w/o enclosures)

Mr. Scott Sevigny  
Shah Smith & Associates  
2825 Wilcrest Drive, Suite 350  
Houston, Texas 77042  
(w/o enclosures)

Mr. William Chalmers  
Page Southerland Page, LLP  
1100 Louisiana, Suite One  
Houston, Texas 77002  
(w/o enclosures)