



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2012

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2012-09041

Dear Mr. Moore:

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# 456307 (TAMU 12-151, 12-152, and 12-162; SO-12-024).

Texas A&M University and the Texas A&M University System (collectively, the "university") received four requests from two requestors for (1) e-mails to and from named individuals pertaining to specified Requests for Proposals ("RFPs") and services, and the names of the individuals who received the RFPs; and (2) all e-mails, memoranda, documents, and correspondence during a specified period of time between three named individuals pertaining to specified university functions.¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We will refer to the individual who submitted the three requests for information dated March 21, 2012 as the "first requestor," and the individual who submitted the request for information dated March 30, 2012 as the "second requestor."

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note Exhibit B-2 is not responsive to the request for information from the second requestor because the correspondence was not created during the specified period of time. This ruling does not address the public availability of the information that is not responsive to the request, and the university is not required to release this information to the second requestor in response to his request.

Section 552.104 of the Government Code protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. The purpose of section 552.104 is to protect the 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). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See id.*

You state the information you have marked directly reveals or pertains to the university’s positions and strategies concerning the outstanding RFPs. You state the selection process is in its early stages and no final decisions have been made nor have any final contracts been executed. You contend release of the information you have marked would disadvantage the university in evaluating responses to the RFPs, determining whether to contract for the services, and negotiating each contract. Based on your representations and our review, we conclude the university may withhold Exhibit B-1 under section 552.104 of the Government Code, until such time as the contracts have been executed.³ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

Section 552.116 of the Government Code provides as follows:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

³As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) Intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state Exhibit B-2 consists of audit working papers that were prepared in conducting an internal audit of the university dining services. We understand the audit was conducted by the A&M Internal Audit Department ("SIAD") and relates to an audit authorized under the Texas Internal Auditing Act, as set forth in chapter 2102 of the Texas Government Code. *See id.* §§ 2102.003 (relating to the duties of an internal auditor). Based on your representations and our review, we agree Exhibit B-2 constitutes audit working papers under section 552.116 of the Government Code. Therefore, the university may withhold Exhibit B-2 from the first requestor under section 552.116 of the Government Code.

In summary, the university may withhold Exhibit B-1 under section 552.104 of the Government Code. The university may withhold Exhibit B-2 from the first requestor under section 552.116 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/bs

Ref: ID# 456307

Enc. Submitted documents

c: Requestors
(w/o enclosures)