



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-13437

Dear Ms. Angadicheril:

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# 462962 (OGC# 144452).

The University of Texas at Austin (the "university") received a request for the RFP responses submitted by EBSCO Publishing ("EBSCO") and Ex Libris (USA), Inc. ("Ex Libris") to the University of Texas Libraries for RFP No. 2011054, Selection of a Vendor to Provide Web-Scale Discovery Services. Although you take no position as to whether the requested information is excepted under the Act, you state release of the requested information may implicate the proprietary interests of EBSCO and Ex Libris. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested 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 Ex Libris and EBSCO. We have considered the submitted comments and reviewed the submitted information.

Section 552.110(b) of the Government Code 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.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

EBSCO and Ex Libris each argue some of their information, including their pricing information, consists of commercial or financial information, release of which would cause the companies substantial competitive harm. Upon review, we conclude EBSCO has established the release of its pricing information would cause it substantial competitive injury, and Ex Libris has established the release of its pricing information and coverage analysis information would cause it substantial competitive injury. Accordingly, the university must withhold the information we have marked under section 552.110(b).¹ However, we find EBSCO has made only conclusory allegations that the release of its remaining information would result in substantial harm to its competitive position, and has provided no specific factual or evidentiary showing to support such allegations. *See* ORD 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). Accordingly, none of EBSCO's remaining information may be withheld under section 552.110(b). As no further exceptions have been raised, the university must release the remaining information.

We note some of the remaining information appears to 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.

In summary, the university must withhold the information we have marked under section 552.110(b) of the Government Code. The university must release the remaining information; however, any information protected by copyright 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.

¹As our ruling is dispositive, we need not address Ex Libris's remaining argument under section 552.110(a) of the Government Code against disclosure of its information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 462962

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Kathryn Heavey
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(w/o enclosures)

Mr. Gary Balentine
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