



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2012

Ms. Ashley R. Allen
Administrative Law Section
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2012-20204

Dear Ms. Allen:

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# 474402.

The Texas General Land Office (the "GLO") received a request for all evaluation criteria and all submitted proposal content not marked confidential or proprietary regarding an RFP for home inspection services. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of third parties. Accordingly, you inform us you notified Sunland Group, Metric Engineering, EDP Engineers Inspectors, LLC, Providence Technical Services, LLC, and Institute for Building Technology and Safety (collectively, the "third parties") of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); 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 under the Act in certain circumstances).* We have reviewed the submitted information.

Initially, we note you have submitted the requested proposals, but you have not submitted any information responsive to the request for all evaluation criteria. To the extent information responsive to the remainder of the request existed on the date the GLO received the request, we assume you have released it. *See Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).* If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302.*

Next, 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

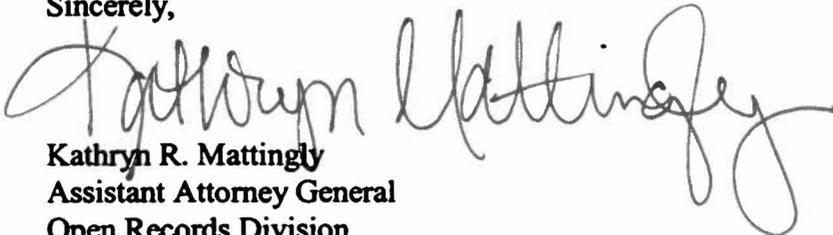
any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties on why their submitted information should not be released. Therefore, we have no basis to conclude the third parties have protected proprietary interests 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 GLO may not withhold any portion of the submitted information on the basis of any proprietary interest any of the third parties may have in it.

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. Accordingly, as no exceptions to disclosure were raised, the submitted information must be released; however, any information subject to 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.

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 "Kathryn R. Mattingly", is written over a printed name and title. The signature is fluid and cursive.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 474402

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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