



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2013

Ms. Lindsey F. Bartula  
Assistant General Counsel  
University of North Texas System  
1155 Union Circle, #310907  
Denton, Texas 76203-5017

OR2013-19283

Dear Ms. Bartula:

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# 504802 (UNT PIR No. 000750).

The University of North Texas System (the "system") received a request for information regarding a specified request for proposals. You indicate you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Electronic Online Systems International ("EOS"), ExLibris, Inc. ("ExLibris"), and SirsiDynix of the request for information and of their right to submit arguments to this office as to why the submitted 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 comments from ExLibris. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-18016 (2013). In that ruling, we held the system must withhold the information we marked under section 552.110 of the Government Code and release the remaining

information, but that any information subject to copyright may be released only in accordance with copyright law. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the system must continue to rely on Open Records Letter No. 2013-18016 as a previous determination and withhold or release the requested information in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling was addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will consider whether any of the remaining information not subject to Open Records Letter No. 2013-18016 is excepted under the Act.

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 SirsiDynix explaining why its information should not be released. Therefore, we have no basis to conclude SirsiDynix has a protected proprietary interest in the remaining 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 system may not withhold any of the remaining information on the basis of any proprietary interest SirsiDynix may have in it.

Some of the materials at issue are 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 system must continue to rely on Open Records Letter No. 2013-18016 as a previous determination and withhold or release the information at issue in accordance with that ruling. The system must release the remaining information, but any information subject to copyright may be released only in accordance with copyright law.

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<sup>1</sup>As we are able to make this determination, we need not address ExLibris's arguments against disclosure of this 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 504802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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