



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 17, 2014

Mr. Brian Nelson  
General Counsel  
Lone Star College System  
5000 Research Forest Drive  
The Woodlands, Texas 77381

OR2014-12350

Dear Mr. Nelson:

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# 529527 (LSCS File No. PR14-0424-00098).

The Lone Star College System (the "system") received a request for the bid tabulation and proposals pertaining to request for proposals number 291, Record Retention, Storage and Shredding Services. You state the bid tabulation has been provided to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the Harris County Department of Education ("HCDOE"), Iron Mountain Information Management, L.L.C. ("Iron Mountain"), Roadrunner Information Management ("Roadrunner"), and Safesite, Inc. ("Safesite"). Accordingly, you state you notified these third parties 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 Iron Mountain. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third 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 letter, we have not received comments from HCDOE, Roadrunner, or Safesite. Thus, these companies have not demonstrated they have protected proprietary interests 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 system may not withhold the submitted information on the basis of any proprietary interests HCDOE, Roadrunner, or Safesite may have in the information.

Iron Mountain raises section 552.104 of the Government Code. This section excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the system does not seek to withhold any information pursuant to this exception, no portion of Iron Mountain's information may be withheld on this basis.

Iron Mountain claims some of its information is excepted from disclosure under section 552.110(b) of the Government Code. This section excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6.

Iron Mountain contends some of its information constitutes commercial or financial information, the release of which would cause substantial competitive harm to the company. We find Iron Mountain has established that its customer information constitutes commercial or financial information for the purposes of section 552.110(b). However, to the extent any of the customer information Iron Mountain seeks to withhold has been published on the company's website, any such information is not confidential under section 552.110(b). Accordingly, the system must withhold Iron Mountain's customer information under section 552.110(b), provided the customer information has not been published on the company's website.

Although Iron Mountain seeks to withhold its pricing information under section 552.110(b), the system informs our office Iron Mountain was the winning bidder with respect to the

request for proposals at issue. We note the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see also* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Upon further review, we find Iron Mountain has not established any of the remaining information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. *See* Open Records Decision Nos. 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). Accordingly, none of Iron Mountain's remaining information may be withheld under section 552.110(b) of the Government Code.

We note some of the remaining information 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. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* 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 withhold Iron Mountain's customer information under section 552.110(b) of the Government Code, provided the customer information has not been published on the company's website. The system must release the remaining information, but 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.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 529527

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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