



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2014

Mr. Damon C. Derrick
General Counsel
Office of General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR2014-15208

Dear Mr. Derrick:

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# 535181.

Stephen F. Austin State University (the "university") received a request for a copy of the winning vendor's proposal, evaluation forms, and the final executed contract for RFP No. SFA-ACA-2014. 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 Sibson Consulting ("Sibson"). Accordingly, you state, and provide documentation showing, you notified Sibson of the request for information and of its 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 reviewed the submitted information.

Initially, we note you have not submitted copies of any of the requested evaluation forms or the final executed contract. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *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 to submit its reasons, if any, as to why information

relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Sibson explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude Sibson has a protected proprietary interest in the 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. Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interest Sibson may have in the information.

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. As no exceptions to disclosure have been raised, the submitted information must be released, 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, 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 535181

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Sibon Consulting
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(w/o enclosures)