



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Mr. W. Montgomery Meitler
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2017-10382

Dear Mr. Meitler:

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# 657656 (TEA PIR# 29106).

The Texas Education Agency (the "agency") received a request for the proposals, evaluation scores, and comments for proposals submitted in response to a specified request for proposals. You state the agency will release some information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of third parties might be implicated. Accordingly, you state, and provide documentation showing, you notified Public Consulting Group; Safal Partners, Inc. ("Safal"); and the University of North Texas 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 received comments from Safal. We have reviewed the submitted information and the submitted arguments.

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 requested information relating to that party should be withheld from disclosure. *See* Gov't

Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Public Consulting Group or the University of North Texas explaining why their information should not be released to the requestor. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the agency may not withhold the submitted information on the basis of any proprietary interest Public Consulting Group or the University of North Texas may have in the information.

We note some of the submitted information consists of information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

(b) A state agency monthly may post contracts described by Subsection (a) that are valued less than \$15,000.

Gov't Code § 2261.253(a)(1), (b). The contract at issue is valued at more than \$15,000, is between the agency, which is a state agency, and a private vendor for the purchase of services, and the contract is not expired or completed. Although Safal seeks to withhold portions of the information at issue under section 552.110 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the agency may not withhold any portion of Safal's information at issue under section 552.110 of the Government Code. Consequently, the agency must release Safal's information in its entirety pursuant to section 2261.253 of the Government Code.

We note some of the information at issue 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 agency must release the submitted 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.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 657656

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)