



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2004

Ms. R. Yvette Clark
General Counsel
Stephen F. Austin State University
P. O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR2004-4355

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202579.

Stephen F. Austin State University (the "university") received a request for the bid proposals submitted for the Series 2004 Bond Proceeds Construction Fund and the winning contract. You take no position and make no arguments regarding the submitted information, but have notified the third parties whose proprietary interests may be implicated by this request and of their opportunity to submit comments to this office in accordance with section 552.305 of the Government Code.¹ *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). We have reviewed the submitted information.

Initially, we must address the university's obligations under chapter 552 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and

¹The third parties you have notified are: BancorpSouth; Morgan Keegan & Company, Inc.; and Regions Morgan Keegan Trust.

state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You state that the university received the request for information on March 9, 2004. However, you did not request a decision from this office until March 25, 2004. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will address the submitted information.

An interested third party is allowed 10 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, none of the notified third parties has submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that the release of any portion of the submitted information would implicate the proprietary interests of any third party and therefore conclude that none of the submitted information may be withheld on that basis. *See, e.g.*, Gov't Code § 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 (1990). Accordingly, the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/krl

Ref: ID# 202579

Enc. Submitted documents

c: Mr. James I. Perkins
Citizens 1st Bank
P. O. Box 630908
Nacogdoches, Texas 75963-0908
(w/o enclosures)

Mr. Stan Cisco
Bancorpsouth
P. O. Box 630887
Nacogdoches, Texas 75963-0887
(w/o enclosures)

Ms. Donna Walton
Morgan Keegan & Company, Inc.
5956 Sherry Lane, 20th Floor
Dallas, Texas 75225
(w/o enclosures)

Ms. Carol H. Thomson
Regions Morgan Keegan Trust
P. O. Box 630988
Nacogdoches, Texas 75963-0988
(w/o enclosures)