



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2005

Mr. Renaldo L. Stowers  
Associate General Counsel  
University of North Texas System  
P.O. Box 310907  
Denton, Texas 76203-0907

OR2005-04372

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 223482.

The University of North Texas (the "university") received a request for documents and notes created during the research and development of the university's identity marks. You state that the university will release some of the requested information. You also indicate that the university will withhold student education record information that is protected under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.110, 552.111, and 552.137 of the Government Code. Additionally, pursuant to section 552.305 of the Government Code, you have notified Applied Behavioral

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<sup>1</sup> FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. See 20 U.S.C. § 1232g(b)(1); see also 34 C.F.R. § 99.3 (defining personally identifiable information). This office generally applies the same analysis under FERPA and section 552.114 of the Government Code. Open Records Decision No. 539 (1990). This office has determined that a governmental body may withhold student identifying information that is protected by FERPA and excepted from disclosure under section 552.114 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions. Open Records Decision No. 634 (1995).

Sciences Marketing, L.L.C. (the “company”), an interested third party, of this request for information, of the fact that the request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *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 in Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

We note that we have previously addressed all of the information that you have submitted to us for review in Open Records Letter No. 2005-03203 (2005). You do not inform us, nor are we aware, of any changes with regard to the law, facts, and circumstances on which Open Records Letter No. 2005-03203 was based.<sup>3</sup> Accordingly, we conclude that the university must rely on our decision in Open Records Letter No. 2005-03203 with respect to the information submitted to us for review. *See* Gov’t Code § 552.301(f); *see also* 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 is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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

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<sup>2</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>We note that, as was the case with Open Records Letter No. 2005-03203, the company did not submit comments in support of withholding its information. *See* Gov’t Code § 552.305(d)(2)(B); *see also* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 223482

Enc. Submitted documents

c: Mr. Matthew Zabel  
Denton Record-Chronicle  
314 East Hickory Street  
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(w/o enclosures)

Mr. John Fullingim  
Applied Behavioral Sciences Marketing  
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