



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2007

Ms. Valerie Coleman-Ferguson  
Associate General Counsel  
University of Houston System  
311 East Cullen Building  
Houston, Texas 77204-2028

OR2007-12155

Dear Ms. Coleman-Ferguson:

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# 290378.

The University of Houston (the "university") received a request for four categories of information, including "documents concerning installing a food and or beverage vendor in the 24 hour study lounge in the M.D. Anderson library[.]" You indicate that information responsive to three of the requested categories has been released to the requestor. Although you make no arguments and take no position as to whether the submitted information is excepted from disclosure, you have notified the third parties whose proprietary interests may be implicated of the request for information pursuant to section 552.305 of the Government Code.<sup>1</sup> *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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Chapter 552 of Government Code in certain circumstances). The university has submitted the information at issue to this office.

Initially, we address your obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office

---

<sup>1</sup>The interested third parties that received notice pursuant to section 552.305 of the Government Code are the following: ARAMARK, Chartwells, Inc., and Sodexo Campus Services.

to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state that the university received the present request on June 28, 2007. However, you did not ask this office for a decision or submit the responsive information until July 23, 2007. Consequently, we find that the university failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide compelling reasons to withhold information, we will address whether the submitted information is excepted under the Act.

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 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 decision, no third party has submitted to this office any reasons explaining why its information should not be released. Therefore, no third party has provided us with a basis to conclude that it has a protected proprietary interest in any of the submitted information. *See, e.g.,* Gov't Code § 552.110(b) (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); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that portions of the submitted information appear 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. Attorney General Opinion JM-672 (1987).

A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990). Thus, the submitted information must be released to the requestor; however, in releasing information that is protected by copyright, the university must comply with copyright law.

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, 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); *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 Office of the Attorney General 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. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 290378

Enc. Submitted documents

c: Mr. Timothy J. O'Brien  
1303 Ruthven Street  
Houston, Texas 77019-5139  
(w/o enclosures)

Mr. Rick Brockland  
Sodexo Campus Services, Division HQ  
283 Cranes Roost Boulevard, Suite 260  
Altamonte Springs, Florida 32701  
(w/o enclosures)

Mr. Fred Free  
Chartwells, Inc.  
1437-B Highland Colony Parkway  
Madison, Mississippi 39110  
(w/o enclosures)

Mr. Angel Herrera  
Regional Vice President  
ARAMARK, Educational Services of Texas, Inc.  
1199 South Belt Line Road, Suite 160  
Coppell, Texas 75019  
(w/o enclosures)