



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2011

Mr. Renaldo Stowers
Senior Associate General Counsel
University of North Texas
1155 Union Circle, #310907
Denton, Texas 76201

OR2011-10276

Dear Mr. Stowers:

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# 424944 (UNT PIR No. 11-091).

The University of North Texas System (the "system") received a request for seven categories of information pertaining to employment-related background check services. Although the system makes no argument as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Truescreen, Inc. ("Truescreen").¹ Accordingly, you inform us you have notified Truescreen of the request and of its right to submit arguments to this office explaining why the submitted 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); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹We note that although the system has generally raised section 552.110 of the Government Code and marked the documents under that exception, it has not provided any arguments. Since you have not submitted arguments concerning this exception, we will not address it. *See* Gov't Code §§ 552.301(b), (e), .302 Further, we note section 552.110 protects the interests of third parties, not governmental bodies. *See* Open Records Decision No. 319 (1982) (statutory predecessor to section 552.110 designed to protect third-party interests that have been recognized by the courts).

to raise and explain applicability of exception in certain circumstances). We have considered the submitted information.²

Initially, we must address the system's obligations under the Act. Section 552.301 prescribes procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Section 552.301(e) requires a governmental body to provide a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(D). You inform us the system received the present request for information on May 6, 2011. Thus, the system's fifteen business day deadline under section 552.301(e) was May 27, 2011. However, you did not submit to this office the information required under section 552.301(e)(1)(D) until July 11, 2011. Thus, we find the system failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information 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 a compelling reason to withhold information, we will consider whether any of the submitted information is excepted under the Act.

We note 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, Truescreen has not submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. Accordingly, none of the information at issue may be

²We 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.

withheld on the basis of the proprietary interests of Truescreen. *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). As no exceptions to its disclosure are raised, the system must release the submitted information.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 424944

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stefan Keller
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Southampton, PA 18966
(w/o enclosures)