



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2013

Ms. Jenny Urquhart  
Assistant General Counsel  
The University of North Texas System  
1901 Main Street, Suite 216  
Dallas, Texas 75201

OR2013-14659

Dear Ms. Urquhart:

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# 497963 (UNT PIR No. 000707).

The University of North Texas System (the "system") received a request for six categories of information pertaining to Request for Qualifications 769-13-822-CS. You indicate the system released some of the requested information. You state, although the system takes no position with respect to the remaining requested information, its release may implicate the interests of third party PDI Ninth House—South Central ("PDI"). Accordingly, you state, and provide documentation demonstrating, the system notified PDI of the request for information and of its right to submit arguments stating why its 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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we must address the system's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth

business day after receiving the request. Gov't Code § 552.301(b). You state the system received the request for information on June 6, 2013; therefore, the ten-business-day deadline was June 20, 2013. However, the envelope in which the system provided the information required by section 552.301(b) was meter-marked June 21, 2013. Thus, the system failed to comply with the requirements 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 is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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, 381-82 (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. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the submitted information is excepted under the Act.

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it 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 PDI explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the third party's interests, and none of the submitted information may be withheld on that basis. *See id.* § 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.

We note some of the submitted information appears to be subject to copyright law. 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. As no exceptions to disclosure have been raised, the system 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 497963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Diane McGrath  
PDI Ninth House - South Central  
c/o Ms. Jenny Urquhart  
Assistant General Counsel  
The University of North Texas System  
1901 Main Street, Suite 216  
Dallas, Texas 75201  
(without enclosures)