



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2014

Mr. Terry Berg  
Officer for Public Information  
Amarillo College  
P.O. Box 447  
Amarillo, Texas 79178

OR2014-16897

Dear Mr. Berg:

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# 537408.

Amarillo College (the "college") received a request for the evaluation sheets and proposals submitted in response to a specified request for qualifications for roof consultant services. We understand most of the responsive information has been provided to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Jim D. Koontz & Associates, Inc. ("Koontz"). Accordingly, you state, and provide documentation showing, you notified Koontz of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Koontz. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note, and you acknowledge, the college did not comply with section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(b), (e). 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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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); *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 understand Koontz to assert its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

Koontz contends its information is commercial or financial information, the release of which would cause Koontz substantial competitive harm. Upon review, we find Koontz has established the release of its client information would cause it substantial competitive injury. Accordingly, to the extent Koontz’s client information is not publicly available on Koontz’s website, the college must withhold Koontz’s client information under section 552.110(b) of the Government Code. However, we find Koontz has failed to provide specific factual evidence demonstrating how the release of its remaining information would cause Koontz substantial competitive injury. *See* Open Records Decision Nos. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, the college may not withhold any of Koontz’s remaining information under section 552.110(b).

In summary, to the extent it is not publicly available on Koontz's website, the college must withhold Koontz's client information under section 552.110(b) of the Government Code. The remaining information must be released.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/ac

Ref: ID# 537408

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jim D. Koontz  
Jim D. Koontz & Associates, Inc.  
3120 North Grimes Street  
Hobbs, New Mexico 88240  
(w/o enclosures)