ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2006

Ms. Cherry Kay Wolf
Associate General Counsel
Texas A&M University System
John B. Connally Building, 6th Floor, MS 1230
301 Tarrow
College Station, Texas 77840-7896

OR2006-03591

Dear Ms. Wolf:

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# 246483.

Texas A&M International University (the "university") received four requests for specified information regarding the applicant pool to the International Business program, information regarding student admissions and the recruiting of foreign/ Hispanic students, information regarding the hiring process of named professors and individuals, all communications between named individuals, the processes to expose alleged illegal activities of the university, and information regarding advertisements/ promotions/ accreditation of the university. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

Initially, we note that the university has made prior requests for rulings to our office regarding information sought by this same requestor. We are also aware that the university has several pending requests for rulings with this office pertaining to the same requestor, and in some instances, overlapping requests for information. To the extent information responsive to this request for a ruling is also the subject of a previous request for information received by the university, and the university has a pending request for a ruling with our office pertaining to such information, please follow the direction of that ruling with respect to that information. To the extent information responsive to this request for a ruling is not the subject of a pending request for a ruling, we address such information in this ruling.

Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. As of the date of this letter, you have not submitted the requested information for our review.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the university's claim under section 552.103 is not a compelling reason to overcome the presumption of openness in this instance, and none of the requested information may be withheld on this basis. As you raise no other exceptions to disclosure for the requested information, you must release it to the requestor.

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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 246483

Enc. Submitted documents

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