



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2007

Ms. Carol Longoria  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2007-04706

Dear Ms. Longoria:

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# 276693.

The University of Texas at El Paso (the "university") received a request for the following information: (1) all responses to RFP Number 724-Marketing, Promotions, and Multi-Media Rights FY 05-06-WEPIIM, with the exception of the requestor's response; (2) any Best and Final Offers submitted as a follow-up to the RFP responses; and (3) the fully executed contract between the university and the winning bidder. You state that you will release a copy of the requested contract. You claim that the remaining requested information may contain the proprietary information of an interested third party. Although you take no position on the proprietary nature of the information, you state, and provide documentation showing, that you have notified International Sports Properties, Inc. ("ISP") of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge, that the university failed to comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(a), (b), (e). 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 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 interest* is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Therefore, we will address whether the submitted information must be withheld to protect the interests of ISP.

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, ISP has not submitted to this office any reasons explaining why its information should not be released. Therefore, ISP has provided us with no 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). Accordingly, we conclude that the university may not withhold any portion of the submitted information on the basis of any proprietary interest ISP may have in the information. As you raise no exceptions, the submitted information must be released 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/jb

Ref: ID# 276693

Enc. Submitted documents

c: Ms. Jennah Jevning  
Action Sport Media  
4380 SouthWest Macadam Avenue, Suite 540  
Portland, Oregon 97239  
(w/o enclosures)

Ms. Janeen Lalik  
Vice President, New Business Development  
International Sports Properties, Inc.  
140 Club Oaks Court  
Winston-Salem, North Carolina 27104  
(w/o enclosures)