



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2008

Mr. Scott A. Kelly
Deputy General Counsel
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2008-12422

Dear Mr. Kelly:

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# 321282.

The Texas A&M University System (the "university") received a request for shoe, apparel, and equipment contracts for the university's football, basketball, and baseball teams during a specified time period. The university takes no position on whether the submitted information is excepted from disclosure, but you state that the release of this information may implicate the proprietary rights of certain third parties. Accordingly, you inform us, and provide documentation showing, that you notified Easton Sports, Inc. ("Easton"), Hillerich & Bradsby Co. ("Hillerich"), Nike USA, Inc. ("Nike"), and Wilson Sporting Goods, Co. ("Wilson") of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.301(d) (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 that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received and considered comments from Wilson.

Initially, we note, and you acknowledge, that the university has not complied with the time period prescribed by section 552.301(e) of the Government Code in requesting a decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a

compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the interests of third parties are at stake, we will consider whether the submitted information is excepted from disclosure under the Act.

We next note that 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from Easton, Hillerich, or Nike. We thus have no basis for concluding that any portion of the Easton, Hillerich, or Nike contracts constitute proprietary information, and the university may not withhold any portion of this information on that basis. *See* 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 (1990). As the university raises no exceptions to the disclosure of this information, the Easton, Hillerich, and Nike contracts must be released.

We now turn to Wilson's argument. Wilson asserts that two contracts, one signed by the university's former football coach and the other signed by the university's current football coach, are not subject to the Act. *See* Gov't Code § 552.021. However, we note that the Wilson contract the university has submitted is signed by the university's Associate Vice President for Finance and University Contracts Officer on behalf of the men's basketball program. Accordingly, as Wilson has raised no arguments against disclosure of the submitted basketball program contract and, as the university does not argue against its release, we find that this information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 321282

Enc. Submitted documents

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(w/o enclosures)

c: Mr. Ray Berens
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c: Mr. Matt Arndt
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c: Mr. Tommy Kain
Director, US Sports Marketing
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c: Mr. Marty W. Archer
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