



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 18, 2009

Ms. Erin K. Stewart
Assistant General Counsel
University of North Texas System
Office of General Counsel
1155 Union Circle, #3I0907
Denton, Texas 76203-5017

OR2009-13191

Dear Ms. Stewart:

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# 355758.

The University of North Texas (the "university") received a request for the statement of qualifications from the firm that was awarded a specified contract, as well as the evaluation summary. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered your arguments.

We must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Within fifteen days of receiving the request, the governmental body must submit to this office several items, including a copy of the specific information requested or representative samples thereof, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You explain that the university received the request for information on July 2, 2009; however, as of the date of this ruling, we have not received a copy or representative sample of the requested information. Thus, you have failed to comply with the requirements of section 552.301(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; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806,

811 (Tex. App.—2007, pet. granted); *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You do not indicate that any third-party interests are at stake. Furthermore, the only exception against disclosure you raise is section 552.104 of the Government Code, which is a discretionary exception that does not make information confidential. *See* Gov't Code § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, by not timely submitting a copy of the requested information, the university has waived its claims under section 552.104. As you raise no further exceptions against disclosure, the university must release the requested information.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 355758

Enc. Submitted documents

c: Requestor
(w/o enclosures)