



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2009

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

OR2009-15990

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# 361214.

The Texas A&M University System (the "university") received a request for all responses to a specified Request for Qualifications. Although you take no position with respect to the public availability of the requested information, you state that release of this information may implicate the proprietary interests of third parties. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the university has notified the interested third parties of the request and of their right to submit arguments to this office explaining why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (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 in certain circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge, that the university failed to comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). 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 that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information that overcomes the presumption of openness. See *id.* § 552.302; *City of Dallas v. Abbott*, 279

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<sup>1</sup>The notified third parties are: Austin Western Contractors, Ltd.; Austin Commercial, LP; Camden Builders, Inc.; G.T. Leach Builders, LLC Residential; Hardin Construction Company; LLC Key Construction; KSO Architects, PC; MW Builders of Texas, Inc.; Randall Scott Architects, Inc.; SpawGlass Construction Corp.; and Warrior Group.

S.W.3d 806, 811 (Tex. App.—Amarillo 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 exists when third-party interests are at stake, or when information is confidential by law. *See* Open Records Decision No. 150 (1977). Therefore, we will determine whether the university must withhold any of the submitted information to protect the third parties' interests.

Next, we note 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 letter, none of the third parties have submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Therefore, we have no basis to conclude that any of the third parties have a protected proprietary interest in the submitted information, and none of it may be withheld on that basis. *See id.* § 552.110; 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 no exceptions against disclosure have been raised, the submitted 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.oag.state.tx.us/open/index\\_orl.php](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 361214

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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