



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2012

Mr. Renaldo Stowers
Senior Associate General Counsel
University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203

OR2012-01777

Dear Mr. Stowers:

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# 444353 (UNT PIR No. 000742).

The University of North Texas (the "university") received a request for the correspondence between the university and the T. Whitfield Davidson Foundation (the "Davidson Foundation") and, additionally, all documents regarding T. Whitfield Davidson. Although the university takes no position regarding whether the requested information is excepted from disclosure, you state its release may implicate the proprietary interests of the Davidson Foundation. Accordingly, you provide documentation showing you have notified the Davidson Foundation of the request and of its right to submit arguments to this office. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from a representative of the Davidson Foundation. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that you have submitted only correspondence between the university and the Davidson Foundation for our review. Thus, to the extent any documents pertaining to T. Whitfield Davidson existed when the present request was received, we assume they have been released. If such information has not been released, then it must be released at this time. *See Gov't Code §§ 552.301(a), .302; see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you acknowledge, and we agree, the university failed to comply with the procedural requirements of section 552.301 of the Government Code. *See Gov't Code § 552.301.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

The Davidson Foundation objects to the release of the submitted information to the extent release would “relate in any manner to the operations of the corporation, its personnel, its real estate activities or any other privileged or confidential topic[.]” Accordingly, we understand the Davidson Foundation to assert the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

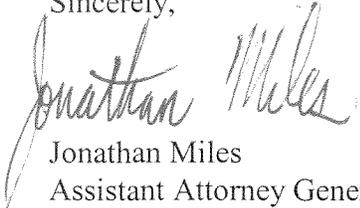
The Davidson Foundation generally states release of the submitted information may harm its competitive position. However, the Davidson Foundation has not provided any arguments in support of its objection to disclosure. Upon review, we find the Davidson Foundation failed to provide specific factual evidence demonstrating that release of any of the submitted information would result in substantial competitive harm. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the university may not withhold any of the submitted information pursuant to section 552.110(b). As no further exceptions are 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,

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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 444353

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. J. Rodney Gilstrap
Smith & Gilstrap
P.O. Drawer A
Marshall, Texas 75671
(w/o enclosures)