



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2014

Ms. Ana Vieira
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-01246

Dear Ms. Vieira:

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# 511606 (OGC# 152830).

The University of Texas at Austin (the "university") received a request for the information responsive to a previous request with a specified control number and for information concerning the hiring of an athletic director. You state the university will release information responsive to the first item of the request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the proprietary interest of a third party might be implicated. Accordingly, you notified Korn/Ferry International ("Korn") of the request and of its right to submit arguments to this office explaining why its information should not be released. *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 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 received arguments submitted on behalf of Korn. We have considered the arguments and reviewed the submitted information.

As you acknowledge, the university failed to comply with the procedural requirements of section 552.301 of the Government Code in asking this office for a ruling. *See Gov't Code* § 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 the information is public and must be released. *See id.* § 552.302. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.*; *Simmons v.*

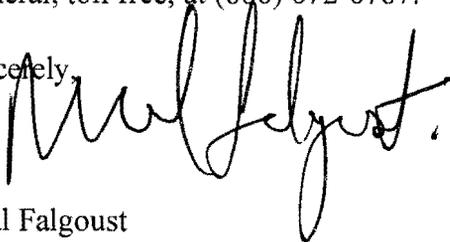
Kuzmich, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is made confidential under other law. Open Records Decision No. 150 (1977). You have informed us that third-party interests are at stake. Additionally, your claim under section 552.101 of the Government Code can make information confidential. As these provide compelling reasons for non-disclosure, we will consider the submitted arguments.

We address Korn's arguments against disclosure of the submitted information. Section 552.110(b) of the Government Code 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). Upon review, we find Korn has demonstrated release of the information at issue would cause the company substantial competitive harm. Accordingly, the university must withhold the submitted information under section 552.110(b) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 511606

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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