



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2015

Ms. Audra Gonzalez Welter
Attorney & Public Information Coordinator
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-22333

Dear Ms. Welter:

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# 584371 (University of Texas System OGC# 163232).

The University of Texas System (the "system") received a request for various categories of information pertaining to rate schedules. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Disciplinary Rule of Professional Conduct 1.05.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of Barlow Appraisal Associates ("Barlow"). Accordingly, you state, and provide documentation demonstrating, you notified Barlow of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305; *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

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Disciplinary Rule of Professional Conduct 1.05 and Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

explain applicability of exception in Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the system's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving a request. *See id.* § 552.301(b). You state, and submit documentation showing, the system received the request for information on July 29, 2015. Thus, we find the system's ten-business-day deadline was August 12, 2015. However, you did not request a ruling until August 19, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). You inform us the system sought clarification of the request on August 13, 2015.³ However, we note the system did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documents were not reset and must be measured from July 29, 2015, the date the system received the request for information. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the system failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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, 381-82 (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 generally exists when information is confidential by

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³*See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

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, we have not received comments from Barlow explaining why the submitted information should not be released. Therefore, we have no basis to conclude Barlow has a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest Barlow may have in the information.

Additionally, you raise section 552.107 of the Government Code and Texas Rule of Evidence 503. This exception and this rule, however, are discretionary in nature. They serve to protect only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. Although you reference *Abbott v. City of Dallas*, 453 S.W. 3d 580, 587-89 (Tex. App.—Austin 2014, pet. filed) and *City of Dallas v. Paxton*, No. 13-1300397-CV, 2015 WL 601974 (Tex. App.—Corpus Christi Feb. 12, 2015, pet. filed) (mem. op.), we note petitions for review were filed with the Texas Supreme Court on January 27, 2015 and March 26, 2015, respectively. With regard to your claim under Texas Disciplinary Rule of Professional Conduct 1.05, we note rule 1.05 concerns the confidentiality of client information. *See* Tex. Disciplinary R. Prof'l Conduct Rule 1.05(a)(1). This office has concluded, in the open records context, an attorney's duty of confidentiality is limited to attorney-client privileged material. *See* Open Records Decision No. 574 at 2-5 (1990) (discussing rule 1.05(a)(1) in context of predecessor provision of section 552.107(1)). Thus, given its limitation in the open records context, the applicability of rule 1.05 also cannot overcome the presumption of openness of section 552.302. Consequently, the system may not withhold any of the responsive information at issue pursuant to section 552.107 of the Government Code, Texas Rule of Evidence 503, or Texas Disciplinary Rule of Professional Conduct 1.05. Accordingly, the system must release the submitted 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.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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 584371

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)