



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2017

Ms. Lindsey Bartula
Assistant General Counsel
University of North Texas System
1155 Union Circle #310907
Denton, Texas 76203

OR2017-00999

Dear Ms. Bartula:

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# 641526 (UNT# 004470 and 004483).

The University of North Texas (the "university") received two requests from different requestors for the contract related to a named guest speaker and the identities of donors supporting a specified guest speaker program. You state the university will release some information to the requestor. You claim some of the information responsive to the second request is excepted from disclosure under section 552.1235 of the Government Code. Additionally, you state release of the information responsive to the first request may implicate the proprietary interests of the Washington Speakers Bureau ("WSB"). Accordingly, you state, and provide documentation showing, you notified WSB 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(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 considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

You argue portions of the information responsive to the first request are marked “confidential.” However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information responsive to the first request falls within an exception to disclosure, the university must release it, notwithstanding any expectations or agreement specifying otherwise.

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 WSB explaining why the information at issue should not be released. Therefore, we have no basis to conclude WSB has a protected proprietary interest in the information at issue. *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. Accordingly, the university may not withhold the information at issue on the basis of any proprietary interest WSB may have in the information.

Section 552.1235 of the Government Code exempts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” *See* Educ. Code § 61.003. Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

You seek to withhold portions of the information responsive to the second request, which you have marked, under section 552.1235. You state the information you have marked pertains to individuals and corporations who have made donations to the university. You indicate the individuals and corporations at issue have not given the university permission to release their names and other identifying information. Based upon your representations

and our review, we agree the information at issue, which you have marked, identifies persons who are donors of the university. Accordingly, we conclude the university must withhold the information you have marked under section 552.1235 of the Government Code. As no further exceptions to disclosure are raised, the university must release the remaining 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 641526

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

1 Third Party
(w/o enclosures)