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February 28, 2024

Open Records Division  
William B. Clements, Jr. State Office Building  
300 W. 15th Street, 11th Floor  
Austin, Texas 78701

**Re: Public Information Request #2 from Jason Koebler to The University of Texas at Tyler -- OGC# 214014**

On February 14, 2024<sup>1</sup>, The University of Texas at Tyler ("University") received a request for information from Jason Koebler ("Requestor") (**TAB 2**). The University subsequently sent the request to The University of Texas System ("UT System") for handling with your office.

In accordance with section 552.301 of the Texas Government Code, we now send this request for decision within ten business days from the date the request was received. UT System has copied the Requestor on this letter brief in accordance with section 552.301(d).

The Requestor seeks access to the following information:

*A press release by Flock Safety shows that the University of Texas, Tyler, collaborated with Flock Safety on a study:*

*[https://www.globenewswire.com/news-](https://www.globenewswire.com/news-release/2024/02/08/2826075/0/en/New-Study-Finds-that-Flock-Safety-is-Instrumental-in-Solving-10-of-Reported-Crime-in-U-S.html)*

*release/2024/02/08/2826075/0/en/New-Study-Finds-that-Flock-Safety-is-Instrumental-in-Solving-10-of-Reported-Crime-in-U-S.html* Therefore, I request the following:

- Communications between Flock (@flocksafety.com) and Richard Helfers.*
  - Emails that mention "Flock" sent to/from "rhelfers@uttyler.edu"*
  - Any contracts between Flock Safety and the University of Texas at Tyler*
- Please search from Jan 1, 2023 until the time this request is processed.*

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<sup>1</sup> The request was sent outside regular business hours on February 13, 2024. Thus, it is considered received the following business day.

We have notified the affected third party of the request and sent notice to advise it of its opportunity to object to the release of their documents (**TAB 3**). The third party has not agreed to the release of the information at issue.

Responsive information may be excepted from disclosure under certain provisions in the Texas Government Code. Specifically, sections 552.101, 552.110, 552.1101, 552.113, and 552.131 may apply if the requested information reveals company trade secrets, financial and commercial/competitive information including, but not limited to, the pricing structure and details of the services provided by the third party.

The University will release some information to the Requestor. In addition to any arguments submitted by the third party, the University asserts some information, labeled **TAB 4**, is protected from disclosure under section 552.107 of the Texas Public Information Act (“Act”).

### **Section 552.107 of the Texas Government Code**

The University asserts the information we have marked is protected under section 552.107 of the Act. Section 552.107(1) of the Texas Government Code protects information from public disclosure if it is prohibited from disclosure by “a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct.” TEX. GOV’T CODE § 552.107(1). As discussed below, Attorney General open records decisions have specifically cited Rule 503 of the Texas Rules of Evidence (“Rule 503”) with regard to attorney-client privilege or Rule 192.5 of the Texas Rules of Civil Procedure when considering core work product. *See also*, TEX. DISCIPLINARY R. OF PROF’L. CONDUCT § 1.05. These rules also extend to the exception to disclosure under section 552.107 of the Texas Government Code.

Under Rule 503, the privilege extends to a “client” or any “representative of a client.” TEX. R. EVID. § 503(b). A representative of a client is a “person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of the client, or any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.” TEX. R. EVID. § 503(a)(2). Open Records Decision No. 676 examines the scope of section 552.107(1) and holds, “information that is protected under Texas Rule of Evidence 503 is excepted from disclosure under Section 552.107(1).” Open Record Decision No. 676 (2002).

Open Records Decision No. 676 also states that “[a]n attorney for a governmental body has an independent duty of confidentiality for information subject to the attorney-client privilege as defined in Texas Rule of Evidence 503.” *Id.* Continuing, the decision states, “[a] governmental body has as much right as a private individual to consult with its attorney without risking the disclosure of communications protected by the attorney-client privilege.” *Id.* Further, section 552.107(1) protects the contents of the entire document containing privileged communications and not just portions designated as legal analysis or recommendations. *Harlandale ISD v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied).

The information at issue consists of a communication between a University employee and a University paralegal in the Office of Legal Affairs in which the employee seeks legal counsel. The parties are identified within **TAB 4**. We note the attorney-client privilege extends to attorney representatives, such as the paralegal to whom this communication was sent. The issues of concern are within the course and scope of the sender's employment with the University. Thus, this individual is a client with the authority to obtain legal advice and act on such advice. The information at issue has been kept confidential and was maintained only by and between the persons identified and protected by the privilege. The information was not intended to be, and has not been, disclosed to parties other than those encompassed by the protection of the attorney-client privilege.

The University has the burden of demonstrating how and why responsive information is excepted under the attorney-client privilege and must show that the responsive documents include confidential communications "to, from, or between representatives of the client governmental body, made for the purpose of effectuating legal representation for it, and the subject matter must pertain to the performance by each client representative of the duties of his or her employment." *See Open Records Decision No. 676 (2002)*. We believe we have provided your office with evidence sufficient to meet this burden. Thus, it is our position that the information at issue is confidential and privileged from disclosure and discovery under section 552.107 of the Texas Government Code.

### **Conclusion**

The University respectfully requests that the Attorney General review the arguments presented in this brief and issue a ruling that the responsive information is protected as described herein.

All interested parties are listed below. If you need additional information, please do not hesitate to contact me at 512-579-5187.

Sincerely,



Jennifer Burnett

cc: Third Party:

Adam Snow  
Chief of Staff to the CPO  
Adam.snow@flocksafety.com

cc: Requestor: (w/o Enclosures)

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