



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Ms. Rebekah Brackin
Angelo State University
ASU Station #11021
San Angelo, Texas 76909-1021

OR2016-21215

Dear Ms. Brackin:

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# 629349.

Angelo State University ("ASU") received a request for the evaluation sheet and proposals pertaining to a specified request for proposals. ASU indicates it has released some of the requested information. ASU does not take a position as to whether the submitted information is excepted from disclosure under the Act.¹ However, ASU states, and provides documentation showing, it notified the following third parties of ASU's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released: Blackboard, Inc.; Carahsoft; Cherwell Software, Inc.; Collegis, L.L.C. d/b/a Collegis Education ("Collegis"); Ellucian; MNCL; Monitor 24-7.com; Team Dynamix; and Westpark Communications, L.P. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

¹We note ASU did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.136 of the Government Code makes information confidential, it can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Third-party interests also can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. Thus, we will consider whether the submitted information must be withheld under the Act on those grounds.

of exception in the Act in certain circumstances). We have received comments from Collegis objecting to the release of some of the information at issue under section 552.104 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only Collegis has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of the remaining third parties, and ASU may not withhold any portion of it on that basis. *See* 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 that information is trade secret), 542 at 3.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* Collegis states it has competitors and argues release of its information under section 552.104 would cause it substantial competitive harm. Upon review, we find Collegis has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude ASU may withhold Collegis's information under section 552.104(a) of the Government Code.

The remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, ASU must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public

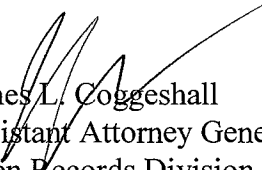
wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

To conclude, ASU may withhold Collegis's information under section 552.104(a) of the Government Code. ASU must withhold the insurance policy numbers in the remaining information under section 552.136. ASU must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 629349

Enc. Submitted documents

c: Requestor
(w/o enclosures)

9 Third Parties
(w/o enclosures)