



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Dr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
601 University Drive, JCK 1040
San Marcos, Texas 78666-4684

OR2017-12599

Dear Dr. Gomez:

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# 661701 (File No. 17028.1).

Texas State University (the "university") received two requests from different requestors for the bid tabulation of a specified request for proposals. The university does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the university states, and provides documentation showing, it notified the following third parties of the university'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: A Photo Identification; Blackboard, Inc. ("Blackboard"); Diamond Business Services, Inc.; ID Edge, Inc.; IdentiSys, Inc.; Iris Ltd., Inc.; Johanns and Keegan Co., Inc.; LoneStar Badge & Sign, Inc.; LSI; One Source Industries; and RACO Industries. *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 of exception in the Act in certain circumstances). We have received comments from Blackboard objecting to the release of some of the information at issue under sections 552.104 and 552.110 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

¹We understand Blackboard to raise sections 552.104 and 552.110 based on its arguments.

Blackboard seeks to withhold its pricing, technical specifications, and contractual terms. However, we note, although the university submitted pricing information, it did not submit information pertaining to Blackboard's technical specifications or contractual terms for our review. This ruling does not address information beyond what the university has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for information. *See id.*

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, none of the remaining third parties has submitted to this office any reasons explaining why the requested information should not be released. Accordingly, we have no basis for concluding the submitted information constitutes proprietary information of these third parties, and the university 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.

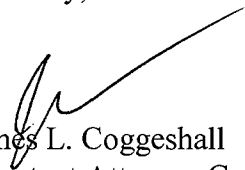
Section 552.110(b) of the Government Code exempts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm). Upon review, we find Blackboard has established the release of its pricing information would cause it substantial competitive injury. Therefore, the university must withhold this information, which we have marked, under section 552.110(b).² 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.

²As our ruling is dispositive, we do not address the arguments to withhold this information.

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# 661701

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)