



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 23, 2018

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2018-04307

Dear Ms. Freeland:

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# 696778 (DPS PIR Nos. 17-8758 and 17-9447).

The Texas Department of Public Safety (the "department") received a request for information pertaining to solicitation number 405-17-R086971, including the awarded contract, all submitted proposals, and the bid tabulation or scoring sheet. The department received a second request from a different requestor for all proposals submitted in response to the same solicitation. The department claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the department states release of the submitted information may implicate the proprietary interests of Accenture LLP ("Accenture"); Deloitte Consulting LLP ("Deloitte"); SAS Institute, Inc.; and Teradata Government Systems, LLC. Accordingly, the department states, and provides documentation showing, it notified each third party 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 received comments from Accenture and Deloitte. We have reviewed the submitted information and the submitted arguments.

Initially, we note Accenture argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the department has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body

requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the department may not withhold any portion of it on that basis. *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.

Next, we note the submitted information includes information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The contract at issue is valued at more than \$15,000, is between the department, which is a state agency, and a private vendor for the purchases of services, and the contract is not expired or completed. *See id.* §§ 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002), 2151.002(3) ("state agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). Deloitte seeks to withhold portions of the information at issue under sections 552.104 and 552.110 of the Government Code. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department may not withhold the information we have indicated under sections 552.104 or 552.110 of the Government Code, and the department must release it pursuant to section 2261.253 of the Government Code.

The department seeks to withhold a portion of the remaining information under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code

§ 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The department represents the information at issue pertains to a competitive bidding situation. In addition, the department states release of the information at issue “would harm [the department]’s purchasing interests and weaken the [d]epartment’s bargaining position as it deliberates options and negotiates best value now and in the future.” Further, the department contends allowing competing vendors to know the prices offered “could artificially inflate prices and prevent the [d]epartment from getting best value[.]” After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have indicated under section 552.104(a) of the Government Code.<sup>1</sup>

Accenture states portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

Accenture argues portions of its information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Accenture has demonstrated the information at issue constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code.

The remaining documents include information that is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the

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<sup>1</sup>As our ruling is dispositive, we need not address Deloitte’s argument against disclosure of this information.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

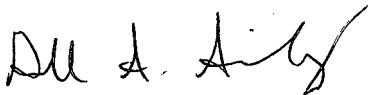
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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.

In summary, the department must release the information we have indicated pursuant to section 2261.253 of the Government Code. The department may withhold the information we have indicated under section 552.104(a) of the Government Code. The department must withhold the information we have marked under section 552.110(b) of the Government Code. The department must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The department must release the remaining information to both requestors; however, any information that is subject to copyright may be released only 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/tdw

Ref: ID# 696778

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)