



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2019

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-02808

Dear Ms. Ayala:

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# 748072 (OGC# 185781).

The University of Texas System (the "system") received a request for a specified contract. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Blue Cross Blue Shield of Texas ("Blue Cross Blue Shield"). Accordingly, you state, and provide documentation showing, you notified Blue Cross Blue Shield of the request and of its right to submit arguments to this office. *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 Blue Cross Blue Shield. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information consists of a contract and incorporated exhibits to the contract that are 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[.]

(b) A state agency monthly may post contracts described by Subsection (a) that are valued less than \$15,000.

Gov't Code § 2261.253(a)(1), (b). The contract at issue is valued at more than \$15,000. The contract is between the system, a state agency, and Blue Cross Blue Shield, a private vendor, for the purchase of services. The contract is not expired or completed. Thus, the contract is subject to section 2261.253 of the Government Code. Although Blue Cross Blue Shield seeks to withhold portions of the information at issue under sections 552.104 and 552.110 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.-Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the system may not withhold any portion of the contract under section 552.104 or section 552.110 of the Government Code or section 552.101 of the Government Code in conjunction with common-law privacy.¹

We note some of the submitted information appears to 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. The system must release the submitted information; however, any information subject to copyright may only be released 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.

¹Although Blue Cross Blue Shield raises section 552.101 of the Government Code in conjunction with constitutional privacy, it provides no argument to support this claim. Accordingly, we do not address this assertion of constitutional privacy.

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 748072

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)