



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-05415

Dear Ms. Tynan:

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# 752077 (OGC# 186254).

The University of Texas at Austin (the "university") received a request for any request for proposal and related materials regarding the campus automated teller services provider for a period of time.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, although you take no position as to whether the remaining submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of interested third parties. Accordingly, you state you notified Bank of America, N.A. and University Federal Credit Union of the request for information and of their 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 Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

¹You state the university sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the university received the required deposit on November 30, 2018. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code also encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides "[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." *Id.* § 418.181; *see also id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). The fact that information may generally be related to a governmental body's security concerns or to a security system does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain the information at issue includes detailed floor plans of several university facilities, including Gregory Gym. You explain the facilities at issue host student events and athletic activities, and features dining locations and office spaces. Thus, you assert, and we agree, the facilities at issue are critical infrastructure. *See generally id.* § 421.001 (defining "critical infrastructure" to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). You state the information at issue reveals technical details of the university facilities' mechanical and electrical features. Further, you state criminal actors could use the information at issue to undermine the university and other law enforcement agencies to

safeguard the welfare of those on campus. Based on your representations and our review, we find you have demonstrated the release of the information we marked would identify the technical details of particular vulnerabilities of the university facilities to an act of terrorism. Thus, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. However, upon review, we find you have failed to demonstrate the remaining information identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, the remaining information is not confidential under section 418.181, and the university may not withhold it under section 552.101 on that basis.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the university must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service.

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"). Upon review, the university must withhold the bank account and routing numbers in the remaining information under section 552.136 of the Government Code.

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. If the individual whose information is at issue timely requested confidentiality pursuant to

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

section 552.024 of the Government Code, the university must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service. The university must withhold the bank account and routing numbers in the remaining information under section 552.136 of the Government Code. 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.

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 752077

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)