



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2019-14239

Dear Ms. Soucy:

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# 767784 (Reference Nos. 686 and 2574).

The Texas Comptroller of Public Accounts (the "comptroller's office") received two requests for information pertaining to a specified request for proposals. The comptroller's office states it will release some of the requested information. We understand the comptroller's office has redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Accenture L.L.P.; Ambonare, Inc.; Bridgepoint Consulting; Capgemini America, Inc.; Cognizant Technology Solutions U.S. Corporation ("Cognizant"); Deloitte Consulting, L.L.P. ("Deloitte"); DXC Technology Company; Enterprise Services, L.L.C.; Ernst & Young L.L.P.; Infosys Public Services, Inc.; NTT Data, Inc. ("NTT"); Sistema Technologies, Inc.; and World Wide Technology, L.L.C. ("World Wide"). Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Cognizant, Deloitte, NTT, and World Wide. We have considered the submitted arguments and reviewed the submitted information.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Initially, we note Deloitte and NTT seek to withhold information the comptroller's office did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the comptroller's office.² See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) 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 *id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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, 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. Accordingly, the comptroller's office may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code excepts 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 (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.* at 840. Cognizant, Deloitte, NTT, and World Wide state they have competitors. Cognizant, Deloitte, NTT, and World Wide also state the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. After review of the information at issue and consideration of the arguments, we find Cognizant, Deloitte, NTT, and World Wide have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the comptroller's office may withhold the information Cognizant, Deloitte, NTT, and World Wide seek to withhold, which we have marked and indicated, under section 552.104(a) of the Government Code.³

NTT also raises section 552.101 of the Government Code for some of its remaining information. Section 552.101 of the Government Code excepts from disclosure "information

²As we are able to make this determination, we need not address the arguments against disclosure of this information.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is considered to be confidential under other law. See Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Although NTT states the information at issue should be withheld from disclosure, NTT does not direct our attention to any law, nor are we aware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code.

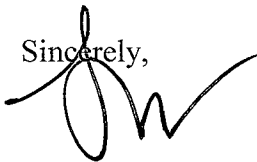
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 comptroller’s office may withhold the information we have marked and indicated under section 552.104(a) of the Government Code. The comptroller’s office must release the remaining 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.

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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 767784

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 12 Third Parties
(w/o enclosures)