



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2019

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

OR2019-19931

Dear Ms. Burnett:

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# 776424 (OGC# 189446).

The University of Texas System (the "system") received a request for multiple categories of information pertaining to a specified project. You state the system will release some information. You also state the system will redact insurance policy numbers pursuant to section 552.136(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Linbeck Group, LLC ("Linbeck") and Overland Partners ("Overland"). Accordingly, you state, and provide documentation showing, the system notified these third parties 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

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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 Linbeck. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform this office the system is withdrawing its request for a ruling with respect to some of the submitted information because the system will release the requested information at issue to the requestor. This ruling does not address the public availability of information the system no longer seeks to withhold that is responsive only to the portion of the request at issue.

Next, the requestor asserts the system did not comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The system received the initial request on March 12, 2019. We note the system sought and received clarification of the information requested on March 26, 2019 and April 11, 2019. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). In addition, on April 25, 2019, the system sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *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). The system informs us it received the required deposit on April 30, 2019. *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). This office does not count the date the request was received or days the governmental body is closed for the purpose of calculating a governmental body's deadlines under the Act. Thus, the system's ten- and fifteen-business-day deadlines were May 14, 2019 and May 21, 2019, respectively. The envelopes in which the system provided the information required by sections 552.301(b) and (e) were postmarked May 14, 2019 and May 21, 2019, respectively. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of

documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the system complied with the procedural requirements mandated by section 552.301. Therefore, we will consider the system's arguments against disclosure of the submitted 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 Overland explaining why the submitted information should not be released. Therefore, we have no basis to conclude Overland has 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, 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 system may not withhold any of the responsive information on the basis of any proprietary interest Overland may have in it.

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). 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). You state the information you indicated relates to a construction project for which a contract has been executed. You inform us, however, the project at issue has been delayed, and the system anticipates the need to engage new vendors to complete unfinished work or revise finished work. You assert release of the information at issue would undercut the system's negotiating position in its attempts to enforce the current construction contract, as well as in any attempts to secure new vendors to complete the project. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information you indicated under section 552.104(a) of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). You claim some of the remaining responsive information is excepted from disclosure under section 418.181 of the Government

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code. 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 relate to a governmental body’s security concerns or emergency management activities 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 exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall 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 state portions of the remaining information, which you marked and indicated, consist of technical drawings and technical details of the University of Texas Rio Grand Valley (the “university”) Multipurpose Academic Building (the “MPAC”) and other university facilities. You explain, and we agree, the MPAC is critical infrastructure for purposes of section 418.181 of the Government Code. *See id.* § 421.001. You also state the information at issue reveals technical details of the mechanical and electrical features of facilities at the university. You argue the information at issue, if released, could provide criminals or terrorists with critical information on how to debilitate these systems, which would undermine the efforts of the university, the system, and other law enforcement agencies to safeguard the welfare of individuals on campus. Based on these representations and our review, we agree the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the system must withhold the information you marked and indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note some of the remaining responsive information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) of the Government Code exempts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a

³The 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).

governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then the system must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee whose information is at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the system may not withhold the information at issue under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the system must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.136(b) 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the system must withhold the bank account and routing numbers within the remaining responsive information under section 552.136 of the Government Code.

We note some of the remaining information at issue 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.

In summary, the system may withhold the information you indicated under section 552.104(a) of the Government Code. The system must withhold the information you marked and indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. If the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then the system must withhold the information we marked under section 552.117(a)(1) of the Government Code.

The system must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The system must withhold the bank account and routing numbers within the remaining responsive information under section 552.136 of the Government Code. The system must release the remaining responsive information; however, the system may only release any information subject to copyright 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 776424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)