



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2019

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

OR2019-30754

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# 794385 (OGC# 192293).

The University of Texas at El Paso (the "university") received a request for information related to the university's current food service contract, including proposals, the current contract and amendments, and scoring and evaluation sheets. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Aramark and Sodexo. Accordingly, you state, and provide documentation showing, the university notified Aramark and Sodexo of the request for information and of the 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 reviewed the submitted information.

Initially, we note you have not submitted the requested contract. To the extent any information responsive to this portion of the request existed on the date the university received the request, we assume the university has released it. If the university has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2018-29130 (2018). In this ruling we concluded, in part, the university may withhold the information we marked under section 552.104(a) of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the university must continue to rely on Open Records Letter No. 2018-29130 as a previous determination and withhold or release the information at issue in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the arguments against disclosure for the submitted information which you state was not previously ruled upon.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Aramark and Sodexo explaining why the remaining information should not be released. Therefore, we have no basis to conclude Aramark and Sodexo have a protected proprietary interest in the remaining 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 university may not withhold the remaining information on the basis of any proprietary interest Aramark and Sodexo may have in the information.

Some of the remaining information is subject to section 552.136 of the Government Code.¹ Section 552.136 of the Government Code provides, "Notwithstanding 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. Accordingly, the university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2018-29130 as a previous determination and withhold or release the information at issue in accordance

¹ 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).

with this ruling. The university must withhold the insurance policy 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Attorney
Open Records Division

DS/mo

Ref: ID# 794385

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Party
(w/o enclosures)