



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2019

Mr. Barry L. Macha
General Counsel
Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308-2099

OR2019-31589

Dear Mr. Macha:

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# 796110.

Midwestern State University (the "university") received a request for information pertaining to a specified bid. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of third parties. Accordingly, we understand you notified ComplianceBridge Corporation ("ComplianceBridge"); LogicManager Inc.; and NAVEX Global of the request for information and their rights 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 ComplianceBridge. We have reviewed the submitted arguments and the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any 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 841. ComplianceBridge states it has competitors. In addition, ComplianceBridge states release of the information at issue “would put [the company] at a disadvantage in any future competitive situations.” After review of the information at issue and consideration of the arguments, we find ComplianceBridge has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold ComplianceBridge’s information in its entirety under section 552.104(a) of the Government Code.¹

Section 552.117(a)(1) of the Government Code 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 numbers may only be withheld if a governmental body does not pay for the cellular telephone service.

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

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

² 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).

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 university may withhold ComplianceBridge's information in its entirety under section 552.104(a) of the Government Code. To the extent 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 numbers may only be withheld if a governmental body does not pay for the cellular telephone service. The university must release the remaining information; however, any information protected by 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 <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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 796110

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)