



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 3, 2019

Ms. Cynthia Tynan  
Assistant General Counsel & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2019-33910

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# 799655 (OGC# 192857 and 193124).

The University of Texas at El Paso (the "university") received two requests from different requestors for proposals submitted in response to RFP 724-1920-JBT, Background Check Services. Although you take no position regarding whether the submitted information is excepted from disclosure, your state release of the information at issue may implicate the proprietary interests of AccuSource, Inc. ("AccuSource"); America Databank, LLC; Background Information Services, Inc.; Castle Branch, Inc. ("Castle Branch"); Crowder HS Consulting Firm, LLC; Honesta Screening; JKE Texas Private Investigations, LLC; Kelmar Global; Paschal Security Systems; Pre-employ.com; SafeHiring Solutions; ScreeningOne; Truescreen, Inc.; and TruView BSI, LLC ("TruView"). Accordingly, you state, and provide documentation demonstrating, the university notified these interested 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 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 AccuSource, Castle Branch, and TruView. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude the remaining 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, 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 information at issue 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. AccuSource and TruView state they have competitors and assert release of some of the information at issue would provide a competitive advantage to their competitors. After review of the information at issue and consideration of the arguments, we find AccuSource and TruView have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, the university may withhold the information we indicated under section 552.104(a) of the Government Code.<sup>1</sup>

Castle Branch raises section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

Castle Branch argues its client information consists of commercial and financial information, the release of which would cause the company substantial competitive harm. Upon review, we find Castle Branch has demonstrated its client information consists of commercial or financial information, the disclosure of which would cause the company

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

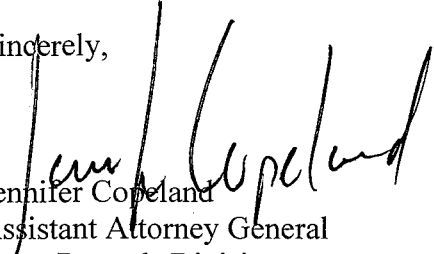
substantial competitive harm. Thus, the university must withhold Castle Branch's client information under section 552.110(b) of the Government Code; however, Castle Branch's client information may not be withheld under section 552.110(b) if the client information is publicly available on Castle Branch's website.

In summary, the university may withhold the information we indicated under section 552.104(a) of the Government Code. The university must withhold Castle Branch's client information under section 552.110(b) of the Government Code; however, Castle Branch's client information may not be withheld under section 552.110(b) if the client information is publicly available on Castle Branch's website. 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 799655

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)