



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 29, 2020

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

OR2020-14943

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# 830798.

Midwestern State University (the "university") received a request for current dining services contracts. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Compass Group USA, Inc. d/b/a Chartwells Higher Education Dining Services ("Chartwells").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified Chartwells of the request and its right 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 Chartwells. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial 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 is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Chartwells

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<sup>1</sup> We note the university did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Chartwells has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find Chartwells has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure “information *submitted to a governmental body* by a vendor, contractor, potential vendor, or potential contractor *in response to a request for a bid, proposal, or qualification[.]*” Gov’t Code § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find Chartwells has failed to demonstrate the applicability of section 552.1101(a) to its information. Accordingly, the university may not withhold any of the information at issue under section 552.1101(a).

In summary, the university must withhold the information we marked under section 552.110(c) 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/rm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)