



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2020

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

OR2020-14963

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# 828306 (UT OGC# 195795).

The University of Texas Medical Branch at Galveston (the "university") received a request for system-wide master services agreements relating to management consulting services that were executed during a specified time period, including addenda, renewals, and modifications.¹ You state the university has released some of the requested information.² Although you state the university takes 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 Berkeley Research Group, L.L.C. ("BRG"); CSC Consulting; Brink & Associates Inc.; Huron Consulting Services, L.L.C. ("Huron"); Kaufman Hall ("Kaufman"); and Navigant Consulting, Inc. Accordingly, you state, and provide documentation showing, the university notified the 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

¹ You state, and submit documentation demonstrating, the university sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² You inform our office third party Korn Ferry International does not object to the release of its information.

Act in certain circumstances). We have received comments from BRG, Huron, and Kaufman. We have reviewed the submitted information and considered the submitted arguments.

Initially, you state, and we agree, the submitted information pertaining to BRG and Huron was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-12731 (2020). In that ruling, we determined the university must (1) withhold BRG's customer information under section 552.110(c) of the Government Code to the extent it is not publicly available on BRG's company website; (2) withhold Huron's information we indicated under section 552.110(c) of the Government Code; (3) withhold the routing and bank account numbers within the remaining information under section 552.136 of the Government Code; and (4) release the remaining information. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the submitted information pertaining to BRG and Huron, the university must continue to rely on Open Records Letter No. 2020-12731 as a previous determination and withhold or release that information in accordance with that 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). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address the public availability of this 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* 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 the submitted information should not be released. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *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.

Kaufman raises section 552.104 of the Government Code for portions of the information at issue. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has

amended section 552.104 since the issuance of *Boeing*. See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address Kaufman's arguments under section 552.104.

Kaufman also raises section 552.110 of the Government Code for portions of the information at issue.³ 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].

Id. § 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). Kaufman argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Kaufman 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).⁴ 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 Kaufman has failed to provide specific factual evidence demonstrating 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 the remaining information at issue under section 552.110(c).

Section 552.110(b) states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” See *id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). As noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. See *id.* § 552.0222(b). Kaufman argues some of its

³ We note the Eighty-sixth Legislature amended section 552.110 effective January 1, 2020. See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Accordingly, we understand Kaufman to raise sections 552.110(b) and 552.110(c) for its information.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information consists of trade secrets subject to section 552.110(b). Upon review, 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(b). Additionally, we find Kaufman has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret. Therefore, the university may not withhold the remaining information at issue under section 552.110(b).

In summary, the university must continue to rely on Open Records Letter No. 2020-12731 as a previous determination and withhold or release the information pertaining to BRG and Huron in accordance with that ruling. 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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/rm

Ref: ID# 828306

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)