



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2020

Ms. Tonya R. Derrick
Senior Security Analyst
City of Dallas
1500 Marilla Street, Room 5DS
Dallas, Texas 75201

OR2020-15810

Dear Ms. Derrick:

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# 830517 (ORR# C002108-030520).

The City of Dallas (the "city") received a request for information pertaining to a specified contract. The city states it will release some information to the requestor. Although the city 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 Workday, Inc. ("Workday"). Accordingly, you state, and provide documentation showing, the city notified Workday 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 received comments from Workday. We have reviewed the submitted arguments and the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-09942 (2020). In that ruling, we determined the city: (1) must withhold the insurance policy number in the submitted information under section 552.136 of the Government Code and (2) must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information

is confidential by law. *See* Gov't Code § 552.007. We also note Workday now seeks to withhold information that was previously ordered released by the prior ruling under section 552.110 of the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address Workday's arguments under this exception for any previously released information. Additionally, with respect to Workday's information that was not previously released, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city must continue to rely on Open Records Letter No. 2020-09942 as a previous determination and withhold Workday's information that was not previously released 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Workday raises subsections 552.110(b) and (c) for portions of the submitted information. Section 552.110(b) of the Government Code 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." *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). Section 552.110(c) of the Government Code excepts from disclosure "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[.]" *Id.* § 552.110(c).

As discussed above, the information Workday seeks to withhold was ordered released in Open Records Letter No. 2020-09942. Since the issuance of the previous ruling, Workday has not disputed this office's conclusion regarding the release of the information at issue. Accordingly, we find Workday has not provided any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Workday substantial harm. *See id.* § 552.110. Therefore, the city may not withhold any of Workday's information that was previously ordered released in Open Records Letter No. 2020-09942 under section 552.110 of the Government Code.

We agree some of the materials at issue 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 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 city must continue to rely on Open Records Letter No. 2020-09942 as a previous determination and withhold Workday's information that was not previously released in accordance with that ruling. The city must release the remaining information; however, any information that is subject to copyright may be released only 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,

Katie Stallcup
Attorney
Open Records Division

AKS/gw

Ref: ID# 830517

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)