



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 10, 2020

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2020-17225

Dear Ms. Burnett:

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# 833899 (OGC# 195379).

The University of Texas System (the "system") received a request for information pertaining to specified system agreements.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Alvarez & Marsal Healthcare Industry Group, LLC; The Chartis Group; Computer Sciences Corporation; Ernst & Young ("E&Y"); Huron Consulting, LLC ("Huron"); J. P. Morgan Securities, LLC; McKinsey & Company, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Optum360, LLC; Oracle; and Premier Healthcare Solutions and Premier Purchasing Partners, LP (collectively "Premier"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Abbott

---

<sup>1</sup> We note the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (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).

Laboratories, Inc. (“Abbott”); E&Y; Huron; Medical Action Industries (“MAI”); and Premier. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Abbott and E&Y argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the system has submitted to us for our review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the system submitted as responsive to the request for information.

Next, MAI argues its information is not responsive to the request for information. However, the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the system has submitted the information at issue for our review, we find the system has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Abbott and Huron raise section 552.104 of the Government Code for a portion of their information. 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.” *Id.* § 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 Abbott’s and Huron’s arguments under section 552.104.

Next, we note section 2261.253 provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

...

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract

(1) information that is confidential under law; [and]  
(2) information the attorney general determines is excepted from public disclosure under [the Act]; and

...

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

*Id.* § 2261.253(a)(1), (e)(1), (2), (f). We note the contracts at issue are between the system, which is a state agency, and private vendors for the purchase of goods or services. Further, the contracts at issue have neither expired nor been completed. Accordingly, we find the contracts at issue are contracts described by section 2261.253. However, the 85th Legislature amended section 2261.253; pursuant to the amendments, state agencies shall redact from contracts subject to section 2261.253 information that the attorney general determines is excepted from public disclosure under the Act. *Id.* § 2261.253(e)(2); *see also id.* § 2261.253(f). The amendments “apply only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after [September 1, 2017].” Act of May 29, 2017, 85th Leg., R.S., ch. 556, § 17(c). We note the amendments do not apply to contracts where the system first advertised or otherwise solicited bids for this contract prior to September 1, 2017. Some of the contracts at issue, which we have marked, are not subject to the amendments. E&Y, Huron, and Premier raise sections 552.101, 552.110, and 552.136 of the Government Code for the contracts not subject to the amendments; however, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006)

(common law controls only where there is no conflicting or controlling statutory law). We note E&Y argues section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code for the information we have indicated. Therefore, with the exception of the information we have indicated, the system may not withhold any portion of the contracts not subject to the amendments under section 552.101, section 552.110, or section 552.136 of the Government Code. However, upon review, we find some of the remaining contracts are subject to the amendments; therefore, we will consider the submitted arguments under sections 552.101 and 552.110 for these contracts, as well as the information not subject to section 2261.253. Additionally, we will consider E&Y's argument under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code for the contracts subject to section 2261.253 that are not subject to the amendments.

E&Y, Huron, and Premier raise section 552.110 of the Government Code for portions of the contracts subject to the amendments. Section 552.0222 of the Government Code provides, in relevant part:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Gov't Code § 552.0222(b)(1). As noted above, the contracts at issue are described by section 2261.253(a) of the Government Code and subject to the amendments. We have no indication any portion of the information at issue was properly redacted under section 2261.253(e). Although E&Y, Huron, and Premier raise section 552.110, section 552.0222 expressly states this exception does not apply to a contract described by section 2261.253(a). Accordingly, we do not address E&Y's, Huron's, and Premier's arguments against disclosure under this exception. However, E&Y raises section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code, and Premier raises section 552.101 of the Government Code in conjunction with common-law trade secrets. Because section 552.101 of the Government Code makes information confidential, we will address E&Y's and Premier's arguments under this exception for their information subject to the amendments to section 2261.253.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 51.914 of the Education Code. Section 51.914 of the Education Code, provides, in pertinent part, the following:

(a) In order to protect the actual or potential value, the following information is confidential and is not subject to disclosure under [the Act], or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee[.]

Educ. Code § 51.914(a)(1). As noted in Open Records Decision No. 651 (1997), the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” ORD 651 at 9-10. Furthermore, whether particular scientific information has such a potential is a question of fact that this office is unable to resolve in the opinion process. *See id.* at 10. Thus, this office has stated in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a governmental body’s assertion that the information has this potential. *See id.* However, a governmental body’s determination that information has a potential for being sold, traded, or licensed for a fee is subject to judicial review. *See id.* We note section 51.914 is not applicable to working titles of experiments or other information that does not reveal the details of the research. *See* Open Records Decision Nos. 557 at 3 (1990), 497 at 6-7 (1988).

E&Y seeks to withhold its submitted contract agreements under section 51.914(a)(1). As noted, E&Y states the system is an institution of higher education. *See* Educ. Code § 61.003(8). E&Y asserts the information at issue relates to robotic initiatives in computer programs undertaken by the system and its affiliate that will be sold or licensed to higher education institutions in the state of Texas or increasing the economic development and diversification of the state. Based on E&Y’s representations and our review of the information at issue, we find section 51.914 of the Education Code may be applicable to some of the information at issue. Upon review, we find the system must withhold the information we have marked in the contracts subject to the amendments to section 2261.253 of the Government Code under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. However, for the information not subject to the amendments to section 2261.253, we must address the conflict between the confidentiality provided under section 51.914 of the Education Code and the right of access provided under section 2261.253 of the Government Code.

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In this instance, we note section 51.914 of the Education Code protects a variety of types of information developed at state institutions of higher education, while section 2261.253 pertains specifically to certain types of contracts for the purchase of goods or services from a private vendor entered into on or after September 1, 2015. In addition, section 2261.253 was the later enacted statute. *See* Act of May 31, 2015, 84th Leg., R.S., ch. 326, § 18

(enacting section 2261.253); Act of May 29, 2017, 85th Leg., R.S., ch. 556, § 17(c) (amending section 2261.253); Act of May 27, 1985, 69th Leg., R.S., ch. 818, § 2 (enacting section 51.914). *See also* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, the statute latest in enactment prevails). Therefore, we find section 2261.253 is more specific than, and prevails over, section 51.914. Accordingly, the system may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code.

Abbott and Premier argue some of the information not subject to section 2261.253 is subject to section 552.110 of the Government Code.<sup>2</sup> 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* Gov't Code § 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 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). Abbott and Premier argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Premier and Abbott have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the system must withhold the information we have marked under section 552.110(c) of the Government Code.<sup>3</sup> 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. Additionally, we

---

<sup>2</sup> Although Abbott cites to sections 552.110(a) and 552.110(b) of the Government Code, 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 Abbott to raise sections 552.110(b) and 552.110(c) for its information.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

find Abbott and Premier have 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. Further, Additionally, we find Abbott and Premier failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the system may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

Premier asserts that portions of its remaining information are protected under the common-law as trade secrets. Section 552.101 of the Government Code also encompasses the common-law. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>4</sup> RESTATEMENT OF TORTS § 757 cmt. b. Having considered its arguments,

---

<sup>4</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

we find Premier has failed to demonstrate any of the information it seeks to withhold meets the definition of a trade secret, nor has Premier demonstrated the necessary factors to establish a trade secret claim for this information. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with the common-law as a trade secret.

In summary, the system must withhold the information we have marked in the contracts subject to the amendments to section 2261.253 of the Government Code under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. The system must withhold the information we have marked under section 552.110(c) of the Government Code. The system 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/be

Ref: ID# 833899

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

13 Third Parties  
(w/o enclosures)