



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Ms. Aesil Kim  
Assistant General Counsel  
University of North Texas System  
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Denton, Texas 76203

OR2020-17931

Dear Ms. Kim:

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# 836330 (UNT Request No. 001781).

The University of North Texas System (the "system") received a request for three categories of information pertaining to request for proposals RFP769-19-11082018JD, Electronic Payment and Merchant Services, including the evaluations, notes, or analyses of the selection committee. 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 third parties. Accordingly, you state, and provide documentation showing, you notified Blackboard, Inc.; CORE Business Technologies; J.P. Morgan Chase; Nelnet Business Solutions, Inc. ("Nelnet"); TouchNet Information Systems, Inc.; Transact; Wells Fargo Merchant Services; and Worldpay 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 Nelnet. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 any of the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have 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 any of the information at issue on the basis of any proprietary interest any of the remaining third party may have in it.

Next, we note you have not submitted any information responsive to the request for the evaluations, notes, or analyses of the selection committee. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.1101 of the Government Code provides, in relevant part:

- (a) . . . [I]nformation 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 is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Nelnet asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes and give advantage to a competitor. Upon review, we find Nelnet has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the system must withhold the information we marked under section 552.1101 of the Government Code; however, to the extent the customer information we have marked is publicly available on Nelnet's website, it may not be withheld under section 552.1101.<sup>2</sup> However, we find Nelnet has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the system may not withhold it on that basis.

Section 552.110(b) of the Government Code states "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). Nelnet argues some of its remaining information consists of trade secrets subject to section 552.110(b). Upon review, we find Nelnet has demonstrated portions of the information at issue constitute trade secrets. Accordingly, the system must withhold the information we marked under section 552.110(b) of the Government Code. However, we find Nelnet has failed to provide specific factual evidence demonstrating any portion 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(b) of the Government Code.

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). Nelnet argues some of its remaining information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Nelnet 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 system may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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<sup>2</sup> As our ruling on this information is dispositive, we need not address the remaining arguments against disclosure of this information.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the system must withhold the submitted insurance policy numbers, bank account number, and routing number within the remaining information under section 552.136 of the Government Code.

We note 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 system must withhold the information we marked under section 552.1101 of the Government Code; however, to the extent the customer information we have marked is publicly available on Nelnet’s website, it may not be withheld under section 552.1101. The system must withhold the information we marked under section 552.110(b) of the Government Code. The system must withhold the submitted insurance policy numbers, bank account number, and routing number within the remaining information under section 552.136 of the Government Code. The system must release the remaining information; however, any information subject to copyright may only be released 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/rm

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 836330

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)