



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 30, 2020

Mr. R. Brooks Moore
Deputy General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2020-18987

Dear Mr. Moore:

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# 837668 (Ref. Nos. D000963-051120 & D001065-052720).

The Texas A&M University System (the "university") received two requests from different requestors for the responses submitted for a specified request for proposals. Although the university takes no position as to whether the submitted information is excepted under the Act, the university states release of the submitted information may implicate the proprietary interests of A-Tune Software INC. ("A-Tune"); Huron Consulting Services, L.L.C. ("Huron"); iMedRIS Data Corporation; Key Solutions; Kualu, Inc.; and Tech Software. Accordingly, you state, and provide documentation showing, the university notified the third parties of the requests 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 A-Tune and Huron. We have reviewed the submitted information and considered the submitted arguments.

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 the remaining third parties explaining why the submitted

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 university may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

A-Tune and Huron raise section 552.110 of the Government Code for portions of the information at issue. 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). A-Tune and Huron argue some of the information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find A-Tune and Huron have demonstrated some of the information at issue constitutes trade secrets. Accordingly, to the extent A-Tune’s and Huron’s customer information is not publicly available on their companies’ websites, the university must withhold A-Tune’s and Huron’s customer information, which we have indicated, under section 552.110(b) of the Government Code.¹ However, to the extent it is publicly available on their companies’ websites, we find the university may not withhold the customer information under section 552.110(b) of the Government Code. Additionally, the university must withhold Huron’s information, which we have marked, under section 552.110(b) of the Government Code.² However, we find A-Tune has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the university 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). A-Tune and Huron also argue some of the remaining information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Huron has demonstrated the information at issue,

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

² As our ruling is dispositive, we need not address Huron’s remaining arguments against disclosure of this information.

which we have marked, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold Huron's information we have marked under section 552.110(c) of the Government Code. However, we find A-Tune 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 any of the remaining information at issue under section 552.110(c) 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, to the extent A-Tune's and Huron's customer information is not publicly available on their companies' websites, the university must withhold A-Tune's and Huron's customer information, which we have indicated, under section 552.110(b) of the Government Code. The university must withhold Huron's information, which we have marked, under section 552.110(b) of the Government Code. The university must withhold Huron's information we have marked under section 552.110(c) of the Government Code. The university 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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/rm

Ref: ID# 837668

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

6 Third Parties
(w/o enclosures)