



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2020

Ms. Cecilia Alvarez  
Assistant General Counsel  
University of Houston System  
4302 University Drive, Room 311  
Houston, Texas 77204-2028

OR2020-19379A

Dear Ms. Alvarez:

Our office issued Open Records Letter No. 2020-19379 (2020) on August 4, 2020. Since that date, our office has received additional information. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 4, 2020. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). This ruling was assigned ID# 851511 (PIR Request IR06361).

The University of Houston (the "university") received a request for information pertaining to the university's relationship with a specified third party, including communications during a certain time period and specified agreements.<sup>1</sup> Although 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 Alpha Entertainment, L.L.C. ("Alpha").<sup>2</sup> Accordingly, you state, and provide documentation showing, the university notified Alpha of the request for information and of its right to

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<sup>1</sup> You state the university 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> We note we asked the university to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). As of the date of this letter, we have not received correspondence pursuant to that request.

submit arguments to this office as to why the submitted information should not be released. *See id.* § 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 Alpha. We have reviewed the submitted arguments and the submitted information.

Initially, section 552.301(e)(1)(D) of the Government Code states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with “a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested.*” Gov’t Code § 552.301(e)(1)(D) (emphasis added). We note you have submitted a voluminous amount of information rather than a representative sample. We have identified and reviewed a representative sample of the voluminous information submitted.<sup>3</sup>

You state, and we agree, a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-11662 (2020). In that ruling, we determined, in pertinent part, the university must release some of the information at issue. 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 id.* § 552.007. We note Alpha now seeks to withhold some of its information which was previously released in 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 Alpha’s claims under section 552.110 for any previously released 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

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<sup>3</sup> To the extent the university identifies confidential information subject to a provision not addressed in this ruling, the university should contact the Open Government Hotline.

evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *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).

Alpha argues some of its information is subject to section 552.110 of the Government Code. However, some of Alpha’s information at issue was ordered released pursuant to Open Records Letter No. 2020-11662. Since the issuance of the previous ruling, Alpha has not disputed this office’s conclusions regarding the release of the information at issue. In this regard, we find Alpha has not taken 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 Alpha substantial harm. *See id.* § 552.110. Accordingly, to the extent the information at issue was ordered released pursuant to Open Records Letter No. 2020-11662, we conclude the university may not withhold the information at issue under section 552.110 of the Government Code.

To the extent the information at issue was not ordered released pursuant to the previous ruling, we find Alpha 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 indicated under section 552.110(c) of the Government Code.<sup>4</sup> However, we find the remaining information at issue, which we marked, is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b) or section 552.110(c). Therefore, the university may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees or officials of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.<sup>5</sup> *Id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

<sup>5</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we indicated under section 552.117(a)(1) of the Government Code; however, the university may only withhold the cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the university may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the university must withhold the bank account, routing, and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[,]” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the university must withhold the e-mail addresses we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

We note some of the remaining information 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 the information at issue was not ordered released pursuant to Open Records Letter No. 2020-11662, the university must withhold the information we indicated under section 552.110(c) of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code,

the university must withhold the information we indicated under section 552.117(a)(1) of the Government Code; however, the university may only withhold the cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body. The university must withhold the bank account, routing, and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The university must withhold the e-mail addresses we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/gw

Ref: ID# 851511

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)