



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 11, 2020

Mr. Ronny H. Wall  
Senior Associate General Counsel  
Texas Tech University System  
P.O. Box 45301  
Lubbock, Texas 79409-5031

OR2020-23080

Dear Mr. Wall:

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# 840724.

Texas Tech University (the "university") received a request for all documents pertaining to a specified request for proposals, including the submitted proposals, evaluation materials, and certain communications. You state the university does not have information responsive to portions of the present request.<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 the following third parties: Salesforce/Attain, LLC ("Attain"); Aviso; Blackboard, Inc.; Civitas Learning; EAB Global, Inc.; Ellucian Company, L.P. ("Ellucian"); Excelsoft Technologies, Inc.; and Hobsons. 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 arguments from Attain, Ellucian, and Hobsons. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We note, and you acknowledge, the submitted information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2020-16665A (2020). In that ruling, we determined the university must: (1) withhold certain information under section 552.110(c) of the Government Code; (2) withhold certain information under section 552.136 of the Government Code; and (3) release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the university must continue to rely on Open Records Letter No. 2020-16665A as a previous determination and withhold or release the submitted information in accordance with that ruling.<sup>2</sup> 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).

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/gw

Ref: ID# 840724

c: Requestor

c: Third Parties

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<sup>2</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.