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ATTORNEY GENERAL OF TEXAS

September 22, 2020

Ms. Emily Ainsworth Howell
Assistant General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2020-23888

Dear Ms. Howell:

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# 845666 (PIR D001386-070620 & D001476-071420).

Texas A&M University (the "university") received two requests for information pertaining to RFP 20-0019. Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Adrian Technologies Inc. ("ATI"); The Chartis Group ("Chartis"); Deloitte Consulting LLP ("Deloitte"); Ernst & Young LLP; Health Management Associates ("HMA"); Herman Neuhauser Research Management Consulting, Inc.; KPMG LLP; Manatt Health Strategies ("Manatt"); MGT Consulting Group; Outreach Strategy; Pricewaterhouse Cooper LLP; SIE Consulting Group LLC; and Whitecap Health Advisors LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of the 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 ATI, Chartis, Deloitte, HMA, and Manatt. We have considered the submitted arguments and reviewed the submitted information.

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) of the Government

Code 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 only received comments from ATI, Chartis, Deloitte, HMA, and Manatt explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties 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). Therefore, the university may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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). Deloitte, HMA, and Manatt seek to withhold some of their information under section 552.110(c). Upon review, we find Deloitte, HMA, and Manatt have demonstrated the information we indicated constitutes 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); however, to the extent any customer information these third parties seek to withhold is publicly available on their respective websites, it may not be withheld under section 552.110(c).¹ However, we find some of the submitted information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Therefore, the university may not withhold any of the information at issue under section 552.110(c) of the Government Code.

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.” *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

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

through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). As noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Deloitte argues the remaining information consists of trade secrets subject to section 552.110(b). However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b).

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). ATI, HMA, Chartis, and Manatt assert disclosure of some of the remaining information would reveal an individual approach to their work, internal operations, or processes and give advantage to a competitor. Upon review, we find ATI, Chartis, HMA, and Manatt have demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the university must withhold the information we indicated under section 552.1101 of the Government Code; however, to the extent any customer information at issue is publicly available on their respective websites, it may not be withheld under section 552.1101 of the Government Code. However, we find

some of the information consists of information subject to section 552.0222(b), and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b). Additionally, ATI, Chartis, HMA, and Manatt have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.136(b) 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.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining 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 university must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent any customer information is at issue is publicly available on the companies at issue respective websites, it may not be withheld under section 552.110(c). The university must withhold the information we indicated under section 552.1101 of the Government Code; however, to the extent any customer information at issue is publicly available on the companies at issue respective websites, it may not be withheld under section 552.1101 of the Government Code. The university must withhold the insurance policy numbers in the remaining information under section 552.136 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.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/be

Ref: ID# 845666

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)