



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2020

Mr. Barry L. Macha
General Counsel
Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308-2099

OR2020-28738

Dear Mr. Macha:

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# 853873.

Midwestern State University (the "university") received a request for proposals, contracts, amendments, and scoring and evaluation sheets related to the university's current dining contract.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Aramark Educational Services, LLC; Compass Group USA, Inc. d/b/a Chartwells Higher Education Dining Services ("Chartwells"); and SodexoUSA. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their right to submit arguments to this office. *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 Chartwells. We have considered the submitted arguments and reviewed the submitted information.

¹ 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).

Initially, we note the information related to Chartwells' proposal and contract was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2020-14943 (2020) and 2020-23308 (2020). In Open Records Letter No. 2020-14943, we held the university must withhold Chartwells' information we marked under section 552.110(c) of the Government Code and release the remaining information. In Open Records Letter No. 2020-23308, we held the university must: (1) withhold Chartwells' information we marked and, to the extent it is not publicly available on Chartwells' website, withhold Chartwells' client reference information we marked under section 552.110(c) of the Government Code; (2) withhold all account and insurance policy numbers under section 552.136 of the Government Code; and (3) release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which Open Records Letter No. 2020-14943 was based. Accordingly, the university must rely on Open Records Letter No. 2020-14943 as a previous determination and withhold or release the identical information in accordance with that ruling.² *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). Furthermore, with respect to the information withheld in Open Records Letter No. 2020-23308, we have no indication there has been any change in the law, facts, or circumstances on which that ruling was based. Accordingly, with respect to the information withheld in Open Records Letter No. 2020-23308, the university must rely on Open Records Letter No. 2020-23308 as a previous determination and withhold the identical information in accordance with that ruling.³ *See id.*

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* Gov't Code § 552.007. We note Chartwells seeks to withhold some of its information which was previously ordered released in Open Records Letter No. 2020-23308 under section 552.110 and section 552.1101 of the Government Code. Because information subject to section 552.110 and section 552.1101 is deemed confidential by law, we will address Chartwells' claims under section 552.110 and section 552.1101 for the previously released information.

Next, 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 id.* § 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 remaining information should not be released. Therefore, we have no basis to conclude the remaining third parties

² As our ruling is dispositive, we need not address Chartwells' arguments against disclosure of this information.

³ As our ruling is dispositive, we need not address Chartwells' arguments against disclosure of this information.

have a protected proprietary interest in the remaining 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 remaining information on the basis of any proprietary interest the remaining third parties may have in the 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 evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c).

Chartwells argues some of its information released pursuant to Open Records Letter No. 2020-23308 is subject to section 552.110 of the Government Code. Since the issuance of the previous ruling, Chartwells has not disputed this office’s conclusions regarding the release of the information at issue. In this regard, we find Chartwells 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 Chartwells substantial harm. *See id.* § 552.110. Accordingly, we conclude the university may not withhold the information at issue under section 552.110 of the Government Code.

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

- (a) Except as provided by Section 552.0222, 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.

Id. § 552.1101(a). Chartwells argues some of its information released pursuant to Open Records Letter No. 2020-23308 is subject to section 552.1101 of the Government Code. Since the issuance of the previous ruling, Chartwells has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find Chartwells has not taken any measures to protect its information in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. Accordingly, we conclude the university may not withhold the information at issue under section 552.1101 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.”⁴ *Id.* § 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 insurance policy numbers and bank account numbers in the remaining information under section 552.136 of the Government Code.

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, the university must rely on Open Records Letter Nos. 2020-14943 and 2020-23308 as previous determinations and withhold or release the identical information in accordance with those rulings. The university must withhold the insurance policy

⁴ 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).

numbers and bank account 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.

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/mo

Ref: ID# 853873

Enc. Submitted documents

c: Requestor
(w/o enclosures)