



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2020

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-30333

Dear Ms. Tynan:

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# 856991 (OGC Nos. 198674 and 199785).

The University of Texas at Arlington (the "university") received two requests from different requestors for information pertaining to request for proposals UTA2020-002RFI. The university states it does not have some of the requested information.¹ Although the university takes no position regarding whether the submitted information is excepted from disclosure under the Act, the university informs us its release may implicate the proprietary interests of the following third parties: Cayuse, Inc.; Huron Consulting Services LLC ("Huron"); InfoEd International, Inc.; Key Solutions, Inc.; Kualu, Inc.; SmartSimple Software, Ltd. ("SmartSimple"); and Streamlyne. Accordingly, the university states, and provides documentation showing, it notified these interested third parties of the request for information and of 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

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

comments from Huron and SmartSimple. We have considered the submitted arguments and reviewed the submitted information.

Initially, the university states the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-24098 (2020). In that ruling, we determined, in relevant part, the university (1) must withhold the information we marked under section 552.1101(a) of the Government Code; however, to the extent the customer information we marked is publicly available on Huron's website, it may not be withheld under section 552.1101 of the Government Code; and (2) must release the remaining information; however, any information subject to copyright may only be withheld in accordance with copyright law. 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 SmartSimple now seeks to withhold information that was previously ordered released by 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 SmartSimple's arguments under this exception for any previously released information. With respect to the remaining information at issue, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the university must rely on Open Records Letter No. 2020-24098 as a previous determination and withhold the information at issue in accordance with that ruling as it relates to Huron's information under section 552.1101 of the Government Code.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).

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) 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 Huron and SmartSimple explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the information at issue. *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 information at issue on the basis of any proprietary interest the remaining third parties may have in the information.

² As we are able to make this determination, we need not address Huron's arguments against disclosure of this information.

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). 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). SmartSimple asserts section 552.110 for some of its information at issue. However, the information at issue was previously ordered released in Open Records Letter No. 2020-24098. We note SmartSimple has not disputed this office’s conclusion regarding the release of the information at issue since the issuance of the previous ruling. In this regard, we find SmartSimple has not provided any measures to protect its information in order for this office conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause SmartSimple substantial harm. *See id.* § 552.110. Therefore, the university may not withhold any of the remaining information at issue under section 552.110 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, the university must rely on Open Records Letter No. 2020-24098 as a previous determination and withhold the information at issue in accordance with that ruling as it relates to Huron’s information under section 552.1101 of the Government Code. The university must release the remaining information; however, any information subject to copyright may only be withheld 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 856991

Enc. Submitted documents

c: Requestors
(w/o enclosures)

c: Third Parties
(w/o enclosures)