



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Ms. Traci Siebenlist  
Associate General Counsel  
Office of the General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2020-30470

Dear Ms. Siebenlist:

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# 853191.

Texas Tech University (the "university") received three requests from different requestors for certain information regarding RFF No. 292-934. 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: Campus CE Corporation; Campus Management Corporation; Cocolevio, LLC ("Cocolevio"); Destiny Solutions ("Destiny"); Element Learning Management Solutions d/b/a Skinny Cat Software, LLC; Entrinsik, Inc. ("Entrinsik"); and InfoReady Corporation. Accordingly, the university states, and provides documentation showing, the university notified these interested third parties of the requests for information and of their 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 Cocolevio, Destiny, and Entrinsik. 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). We note, although we received comments from Destiny, Destiny does not raise any exceptions to disclosure or assert it has a protected proprietary interest in the information at issue. As of the date of this letter, we have only received comments from Cocolevio and Entrinsik explaining why the information at issue should not be released. Thus, we have no basis to conclude Destiny or the remaining third parties have 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 Destiny or the remaining third parties may have in the information.

Cocolevio and Entrinsik each raise section 552.110 of the Government Code.<sup>1</sup> 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 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 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). Cocolevio and Entrinsik argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Cocolevio and Entrinsik have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly,

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<sup>1</sup> Although Cocolevio cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

the university must withhold the information we marked and indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Cocolevio and Entrinsik is publicly available on the companies' respective websites, it may not be withheld under section 552.110(c).<sup>2</sup> Nonetheless, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). Additionally, we find Cocolevio has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any portion of the remaining information at issue under section 552.110.

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

(a) Except as provided by Section 552.0222, information 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Entrinsik

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

asserts disclosure of some of its remaining information would reveal an individual approach to pricing methodology, cost data, or other pricing information and give advantage to a competitor. However, upon review, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a).

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.”<sup>3</sup> *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 within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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 marked and indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Cocolevio and Entrinsik is publicly available on the companies’ respective websites, it may not be withheld under section 552.110(c) of the Government Code. The university must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The university must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.<sup>4</sup>

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.

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<sup>3</sup> 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).

<sup>4</sup> We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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/jm

Ref: ID# 853191

c: Requestors

9 Third Parties