



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Ms. Cecilia Alvarez
Assistant General Counsel
University of Houston System
4302 University Drive, Room 311
Houston, Texas 77204-2028

OR2020-32118

Dear Ms. Alvarez:

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# 859590 (Ref. No. IR06760).

The University of Houston (the "university") received a request for the following types of information pertaining to a specified request for proposals: contracts, the proposals of winning bidders, certain information pertaining to companies that requested and submitted proposals, and information pertaining to contract performance.¹ You state the university does not have information responsive to portions of the present request.² Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of General Revenue Corporation; Transworld Systems, Inc. ("TSI"); and Williams and Fudge, Inc. Accordingly, you state, and provide documentation demonstrating, the university notified these interested third parties of the request for information and of their right to

¹ You state the university sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² 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).

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 TSI. 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) 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 not received comments from either of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude either of 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 any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Next, we note section 2261.253 of the Government Code provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Id. § 2261.253(a)(1). We note the submitted information includes contracts, one of which is between the university, a state agency, and TSI, a private vendor, for the purchase of goods or services. Further, the contract at issue has neither expired nor been completed. Accordingly, we find the contract at issue is a contract described by section 2261.253.

TSI raises sections 552.110 and 552.1101 of the Government Code for portions of the contract at issue. Section 552.0222 of the Government Code provides, in relevant part:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Id. § 552.0222(b)(1). As noted above, the contract at issue is a contract described by section 2261.253(a). Additionally, we have no indication any portion of the contract at issue was

properly redacted under section 2261.253(e). Although TSI raises sections 552.110 and 552.1101, section 552.0222 expressly states these exceptions do not apply to a contract described by section 2261.253(a). Therefore, we do not address TSI's arguments against disclosure for the contract at issue under section 552.110 or section 552.1101 of the Government Code, and the university may not withhold any portion of it on those bases.

TSI raises section 552.110 of the Government Code for its remaining information at issue. Section 552.110(b) 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). Upon review, we find TSI has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked and, to the extent it is not publicly available on TSI's company website, the client information we marked under section 552.110(c) of the Government Code.³ However, to the extent the client information we marked is publicly available on TSI's company website, we find the university may not withhold such client information under either section 552.110(b) or section 552.110(c). Further, we find TSI 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 of the Government Code.

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

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

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). TSI asserts section 552.1101(a) for its remaining information at issue. Upon review, we find TSI has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a) of the Government Code, and the university may not withhold it on that basis.

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 government body is confidential.”⁴ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the university must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the university must withhold the information we marked and, to the extent it is not publicly available on TSI’s company website, the client information we marked under section 552.110(c) of the Government Code. The university must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The university must release the remaining information.

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.

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).

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/jxd

Ref: ID# 859590

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)