



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Ms. Nelly R. Herrera
Vice Chancellor & General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2022-01557

Dear Ms. Herrera:

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# 926542 (File No. 21-0412).

Sam Houston State University (the "university") received a request for information pertaining to a specified request for proposals.¹ You state the university will release some of the requested information. You also state some of the requested information is subject to a previous ruling from our office. In addition, you state release of the submitted information may implicate the proprietary interests of T2 Systems, Inc. ("T2"). Accordingly, you state, and provide documentation showing, the university notified T2 of the request for information and of its 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 T2. We have reviewed the submitted information and considered the submitted arguments.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2021-27770

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).

(2021). In that ruling, we determined: (1) to the extent EDC's and iParq's customer information is not publicly available on their company websites, the university must withhold EDC's and iParq's customer information under section 552.110(c) of the Government Code; (2) to the extent Passport's customer information is not publicly available on its company's website, the university must withhold Passport's customer information under section 552.110(b) of the Government Code; (3) the university must withhold the information we have marked under section 552.110(b) of the Government Code; (4) to the extent the information at issue pertains to a real, living individual, the university must withhold the information we have marked and all visible license plate images under section 552.130 of the Government Code; and (5) the university must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the university must continue to rely on Open Records Letter No. 2021-27770 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address whether the submitted information is excepted from disclosure.

Next, we note T2 argues against the release of some information that was not submitted by the university. This ruling does not address information that was not submitted by the university and is limited to the information the university has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

T2 raises section 552.104 of the Government Code for a portion of its information at issue. Section 552.104 excepts from disclosure information "if a *governmental body* demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address T2's arguments under section 552.104 of the Government Code.

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).

T2 argues some of its information at issue is subject to section 552.110 of the Government Code. Upon review, we find T2 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 T2’s customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by T2, including but not limited to on its company website or social media accounts, it may not be withheld under section 552.110.² However, we find T2 has failed to provide specific factual evidence demonstrating any portion of its 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 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 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;

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

(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). T2 argues some of its remaining information at issue is subject to section 552.1101(a) of the Government Code. However, we find T2 has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the university may not withhold it on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See id.* § 552.130. Upon review, we are unable to determine whether the information at issue pertains to actual living individuals or fictitious individuals. Therefore, we must rule conditionally. To the extent the information at issue pertains to a real, living individual, the university must withhold all visible license plate images under section 552.130 of the Government Code. To the extent the information at issue does not pertain to a real, living individual, the university may not withhold this information under section 552.130 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 continue to rely on Open Records Letter No. 2021-27770 as a previous determination and withhold or release the information at issue in accordance with that ruling. The university must withhold T2's customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by T2, including but not limited to on its company website or social media accounts, it may not be withheld under section 552.110 of the Government Code. To the extent the information at issue pertains to a real, living individual, the university must withhold all visible license plate images under section 552.130 of the Government Code. The university must release the remaining information;

³ 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).

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# 926542

Enc. Submitted documents

c: Requestor
(w/o enclosures)