



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2022

Ms. Hadassah Schloss
Director
Open Records
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2022-05266

Dear Ms. Schloss:

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# 931640 (GLO ID# 22-0231).

The Texas General Land Office (the "GLO") received a request for a previously successful submission for a specified request for proposals. You state you have released some information. Although the GLO takes no position as to whether the submitted information is excepted under the Act, the GLO states release of this information may implicate the proprietary interests of Alliance Work Partners and the University of Texas Health Science Center at Houston (the "UT Health"). Accordingly, the GLO states, and provides documentation showing, it notified each third party of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304, .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 UT Health. We have considered the submitted arguments and reviewed the submitted information.

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 the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party has 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). Accordingly, the GLO may not withhold the submitted information on the basis of any proprietary interest the remaining third party may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). UT Health explains the information at issue consists of an agreement between UT Health and the GLO to provide Employee Assistance Program (“EAP”) services. Further, UT Health explains it was retained to provide Employee Assistance Counseling Services for GLO employees, their households, and certain former GLO employees. UT Health asserts it has specific marketplace interests in the information at issue because it has contracted with entities other than the GLO to provide EAP services, demonstrating that UT Health routinely engages in competitive situations with respect to the provision of EAP services and intends to engage in such competitive situations in the future. UT Health also asserts that it intends to compete with other “public and private entities for contracts to provide [EAP] services.” UT Health argues release of the information at issue “would reveal competitive details of the [UT Health EAP] services pricing to the detriment of [UT Health] and would damage [UT Health’s] negotiating position with respect to future contracts and the renewal of the existing contract for EAP services.” Based upon UT Health’s representations and our review, we find UT Health has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find UT Health has demonstrated release of the information at issue, which we indicated, would give advantage to a competitor or bidder. Accordingly, the GLO may withhold the information we indicated under section 552.104(a) 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.”¹ Gov’t Code § 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 GLO must withhold the insurance policy 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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 GLO may withhold the information we indicated under section 552.104(a) of the Government Code. The GLO must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The GLO must release the remaining information; however, any information protected by copyright may only be released 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/be

Ref: ID# 931640

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)