



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 28, 2022

Mr. Timothy Stewart  
Deputy General Counsel  
Texas Southern University  
3100 Cleburne Street, Hannah Hall—340  
Houston, Texas 77004

OR2022-12188

Dear Mr. Stewart:

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# 944605.

Texas Southern University (the “university”) received a request for information pertaining to a specified request for proposals, including the final executed contract. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of CampusWorks Inc.; Evergreen Solutions LLC; MossAdams; Productive Outcomes LLC; Public Works LLC; The Segal Company; Territory Proposal; and Weaver and Tidwell LLP (“Weaver”). Accordingly, the university states, and provides documentation showing, it notified these third parties of the request for information and of the 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 Weaver. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup> We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office. Further, we note the submitted information includes the requestor’s proposal. As we assume the requestor does not seek access to the requestor’s own proposal, we do not address the public availability of that information.

Initially, we note the university has not submitted information responsive to the portion of the request seeking the final executed contract. To the extent any additional information responsive to this portion of the request existed on the date the university received the request, we assume the university has released it. If the university has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the procedural obligations of the university under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the university received the request for information on January 25, 2022. Accordingly, the university's ten-business-day deadline was February 8, 2022. However, you did not request a ruling from this office until February 9, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the university failed to comply with the procedural requirements mandated by section 552.301(b) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The university claims section 552.104 of the Government Code for some of the submitted information. However, we find you have failed to establish a compelling reason to address this exception. Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the submitted information may be withheld on behalf of the notified third parties. *See* Gov't Code §§ 552.007, .302, .352. Additionally, because section 552.136 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the submitted information.<sup>2</sup>

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in the submitted information. *See, e.g., id.* § 552.110

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<sup>2</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).

(requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

*Id.* § 552.1101(a), (b). 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). Weaver asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, and pricing methodologies

and give advantage to a competitor. Upon review, we find Weaver has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the university must withhold the information we marked under section 552.1101(a).<sup>3</sup> However, we find some of 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). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Weaver has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a).

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). Weaver argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Weaver has demonstrated portions of the information at issue constitute trade secrets. Accordingly, to the extent Weaver’s customer information is not made available to the public by Weaver, including but not limited to on its website or social media accounts, the university must withhold Weaver’s customer information under section 552.110(b) of the Government Code. However, to the extent Weaver’s customer information is made available to the public by Weaver, including but not limited to on its website or social media accounts, we find the university may not withhold Weaver’s customer information under section 552.110 of the Government Code. Additionally, we find Weaver has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret. Therefore, the university may not withhold any of the remaining information at issue under section 552.110 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.” *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 submitted insurance policy numbers under section 552.136 of the Government Code.

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<sup>3</sup> As our ruling is dispositive, we need not address Weaver’s remaining argument against disclosure of this information.

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 withhold the information we marked under section 552.1101(a) of the Government Code. To the extent Weaver's customer information is not made available to the public by Weaver, including but not limited to on its website or social media accounts, the university must withhold Weaver's customer information under section 552.110(b) of the Government Code. The university must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The university must release the remaining information; 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,

Colin Henry  
Attorney  
Open Records Division

CEH/be

Ref: ID# 944605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

8 Third Parties  
(w/o enclosures)