



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2022

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

OR2022-14561

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# 946586.

Texas Tech University (the "university") received two requests from different requestors for winning proposals and bid tabulations related to a specified request for proposals.<sup>1</sup> You state some of the submitted 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 22nd Century Technologies, Inc. ("22nd Century"); All Star Temporaries, Inc. d/b/a Lubbock Temporary Help Services, Inc. ("LTH"); InGenesis, Inc. ("InGenesis"); and KT Black Services, LLC ("KT Black"). Accordingly, you state, and provide documentation showing, you notified the third parties of the requests 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 InGenesis, KT Black, and LTH. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> 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).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from 22nd Century. Thus, we have no basis to conclude 22nd Century 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 university may not withhold any of the submitted information on the basis of any proprietary interest 22nd Century may have in the information.

You state, and we agree, some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-28146 (2021). In that ruling, we determined the university must: (1) withhold the information we marked under section 552.110(b) of the Government Code; (2) withhold InGenesis' customer information, and the information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information is publicly available on the company's website, it may not be withheld under section 552.110(c) of the Government Code; (3) withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code; and (4) release the remaining information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007. We note although LTH raises section 552.104 of the Government Code for some of its information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the university may not now withhold the information previously ordered released in Open Records Letter No. 2021-28146 under section 552.104 of the Government Code. We also note KT Black and LTH seek to withhold some of their information which was previously ordered released in Open Records Letter No. 2021-28146 under sections 552.101, 552.110, 552.1101, and 552.128 of the Government Code. Because information subject to sections 552.101, 552.110, 552.1101, and 552.128 of the Government Code is deemed confidential by law, we will address KT Black's and LJH's arguments under sections 552.101, 552.110, 552.1101, and 552.128 for the previously released information. Nevertheless, except with regard to KT Black's and LJH's claims under sections 552.101, 552.110, 552.1101, and 552.128, we have no indication there has been any change in the law, facts, or circumstances on which Open Records Letter No. 2021-28146 was based with respect to the remaining information at issue. Accordingly, except with regard to KT Black's and LJH's claims under sections 552.101, 552.110, 552.1101, and 552.128, for the submitted information that is identical to the information previously requested and ruled upon by this office, the university must rely on Open Records Letter No. 2021-28146 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and

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

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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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.” Gov’t Code § 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).

KT Black and LTH argue some of their information released pursuant to Open Records Letter No. 2021-28146 is subject to section 552.110 of the Government Code. Since the issuance of the previous ruling, KT Black and LTH have not disputed this office’s conclusions regarding the release of the information at issue. In this regard, we find KT Black and LTH have not taken any measures to protect their information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause KT Black or LTH substantial harm. *See id.* § 552.110. Accordingly, we conclude the university may not withhold the information at issue under section 552.110 of the Government Code.

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

- (a) Except as provided by Section 552.0222, 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 [required disclosure] 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). KT Black argues some of its information released pursuant to Open Records Letter No. 2021-28146 is subject to section 552.1101 of the Government Code. Since the issuance of the previous ruling, KT Black has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find KT Black has not taken any measures to protect its information in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. Accordingly, we conclude the university may not withhold the information at issue under section 552.1101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 402.083(a) of the Labor Code. Section 402.083 states "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Although KT Black argues some of its information at issue constitutes information in a claim file, you provide no representation, and the documents do not reflect, the university obtained these records from the division. Therefore, we find KT Black has failed to demonstrate the applicability of section 402.083 to the information at issue. Thus, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.

KT Black argues some of its remaining information at issue is excepted from disclosure under section 552.128 of the Government Code. Section 552.128 is applicable to "[i]nformation submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or

disadvantaged business under a local, state, or federal certification program[.]” Gov’t Code § 552.128. Section 552.128(c) provides:

Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

*Id.* § 552.128(c). In this instance, KT Black submitted the information at issue to the university in connection with a specific proposed contractual relationship with the university. We therefore conclude the university may not withhold any portion of KT Black’s information under section 552.128 of the Government Code.

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 governmental body is confidential.”<sup>3</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, for the submitted information that is identical to the information previously requested and ruled upon by this office, the university must rely on Open Records Letter No. 2021-28146 as a previous determination and withhold or release the identical information in accordance with that ruling. The university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The university must release the remaining information.<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.

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->

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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 remaining information contains 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).

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Sincerely,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/jm

Ref: ID# 946586

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)