



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Ms. Tamara Aronstein  
Assistant General Counsel  
Texas Higher Education Coordinating Board  
P.O. Box 12788  
Austin, Texas 78711-2788

OR2022-19521

Dear Ms. Aronstein:

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# 953061 (Ref. Nos. 2022-27, 2022-30, 2022-31).

The Texas Higher Education Coordinating Board (the "board") received three requests from different requestors for information pertaining to a specified solicitation. Although the board takes no position as to whether the submitted information is excepted under the Act, the board states release of the submitted information may implicate the proprietary interests of AndiSites, Inc.; Barkley Rei, LLC; Code and Theory ("Code"); Deloitte Consulting, LLP ("Deloitte"); Exemplifi, LLC; Forum One ("Forum"); Geographic Solutions, Inc. ("Geographic"); Mighty Citizen; Neumeric Technologies Corporation; Pairin, Inc. ("Pairin"); Promet Source; Slalom, LLC; and Vantage Point Consulting. Accordingly, the board states, and provides documentation showing, it notified each third party of the requests 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 Code, Deloitte, Forum, Geographic, and Pairin. We have considered the submitted arguments reviewed the submitted representative sample of information.

Initially, we note the board has only submitted the proposals of two vendors. Although the board indicates it has submitted a representative sample of the requested information, we find the submitted information is not representative of all of the information at issue. Please be advised, this open records letter ruling applies only to the information the board has

submitted for our review. This ruling does not authorize the board to withhold any information that is substantially different from the types of information the board submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any additional responsive information, including the proposals of the remaining vendors, existed on the date the board received the requests for information, we assume the board has released it. If the board has not released any such information, it must do so at this time. *See id.* §§ 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). However, if the board believes the information may not lawfully be released, the board must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Next, 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 noted above, we have received comments from Code, Deloitte, Forum, Geographic, and Pairin. As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the requested information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the requested information, and the board may not withhold any portion of it on that basis. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

Next, we note Code, Forum, Geographic, and Pairin argue against disclosure of information that was not submitted to this office for review. This ruling does not address information beyond what the board has submitted to us for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Therefore, as noted above, this ruling is limited to the information the board submitted as responsive to the requests for information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015

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<sup>1</sup> As we are able to make this determination, we do not address the arguments of Code, Forum, Geographic, and Pairin for this information.

<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).

WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the board must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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[.]” Gov't Code § 552.110(c). Deloitte argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Deloitte has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the board must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Deloitte, including but not limited to on its website or social media accounts, it may not be withheld under 552.110.<sup>3</sup>

Finally, we note some of the remaining materials 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 board must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The board must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Deloitte, including but not limited to on its website or social media accounts, it may not be withheld under 552.110. The board 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

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/be

Ref: ID# 953061

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

14 Third Parties  
(w/o enclosures)