



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2022

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701

OR2022-21030

Dear Ms. Burnett:

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# 959912 (OGC# 206146).

The University of Texas Health Science Center at San Antonio (the "university") received a request for scoring and evaluative information for a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of CTI; ECG Management Consultants; Ernst & Young LLP; Huron Consulting Services, LLC; J. Taylor & Associates; Manatt Health Strategies, LLC; McKinsey & Company, Inc. ("McKinsey"); and PWC LLP. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 McKinsey. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2022-13068 (2022). In that ruling, we determined the university must (1) withhold the information we marked under section 552.110(c) of the Government Code; and (2) 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* Gov't Code § 552.007. McKinsey now seeks to withhold information that was previously ordered released by the prior ruling under section 552.110 of the Government Code and section 552.1101 of the Government Code. Because information subject to section 552.110 and section 552.1101 of the Government Code is deemed confidential by law, we will address the arguments under these exceptions for any previously released information. Nevertheless, as we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based, the university must continue to rely on Open Records Letter No. 2022-13068 as a previous determination with respect to the remaining information and withhold or release the identical information in accordance with that ruling.¹ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

McKinsey raises section 552.110 of the Government Code for some of its information. 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 states:

Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Id. § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Section 552.1101 of the Government Code provides, in relevant part, as follows:

- (a) Except as provided by [s]ection 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

¹ As we are able to make this determination, we need not address the arguments against disclosure of this information.

excepted from [required disclosure] if the vendor, contractor, potential vendor, or potential contract 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) organization 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). 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). McKinsey argues some of its information at issue consists of a trade secret subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). However, upon review, we find the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110.

McKinsey raises section 552.1101(a) of the Government Code for portions of the information at issue, asserting disclosure of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes. However, upon review, we find the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a).

In summary, with the exception of McKinsey's information, as we have no indication there has been any change in the law, facts, or circumstances on which Open Records Letter No. 2022-13068 was based, the university must continue to rely on Open Records Letter No. 2022-13068 as a previous determination with respect to the information at issue and withhold or release the identical information in accordance with that ruling. The remaining information must be released.

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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/be

Ref: ID# 959912

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)