



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2022

Ms. Cynthia Tynan  
Assistant General Counsel & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-30207

Dear Ms. Tynan:

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# 975558 (Ref. No. 206832).

The University of Texas at El Paso (the "university") received a request for specified contracts and documents pertaining to a third party during a defined period of time. You state you do not maintain information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. Additionally, the university states release of the submitted information may implicate the proprietary interests of Ruffalo Noel Levitz, LLC ("RNL"). Accordingly, the university states, and provides documentation showing, it notified RNL 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 considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</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

Initially, 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 of the date of this letter, we have not received comments from RNL explaining why the submitted information should not be released. Therefore, we have no basis to conclude RNL 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 the submitted information on the basis of any proprietary interest RNL may have in the information.

We note section 2261.253 of the Government Code provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

...

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract:

...

(2) information the attorney general determines is exempted from public disclosure under [the Act.]

...

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

*Id.* § 2261.253(a)(1), (e)(2), (f). We note the submitted information consists of contracts between the university, a state agency, and RNL, a private vendor, for the purchase of goods or services. *See id.* § 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002(3) ("state agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). Further, the contracts at issue have neither expired nor been completed. Thus, we find the contracts at issue are contracts described by section 2261.253. The university raises sections 552.104 and 552.139 of the Government Code for the submitted information; however, the exceptions to disclosure found in the Act do not

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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.

generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). The 85th Legislature amended section 2261.253; pursuant to the amendments, state agencies shall redact from contracts subject to section 2261.253 information that the attorney general determines is excepted from public disclosure under the Act. Gov't Code § 2261.253(e)(2); *see also id.* § 2261.253(f). The amendments “apply only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after [September 1, 2017].” Act of May 29, 2017, 85th Leg., R.S., ch. 556, § 17(c). Upon review, we find the contracts at issue are subject to the amendments. Thus, we will consider the university’s arguments under sections 552.104 and 552.139 of the Government Code for the information at issue.

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.” Gov’t Code § 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). You explain the university must compete with other public and private universities to attract and retain students. Therefore, you assert the university has specific marketplace interests in the information at issue. You argue release of the information at issue would provide a competitive advantage to private and out-of-state universities which are not subject to the Act.

The university seeks to withhold the entirety of the submitted information under section 552.104. However, subsection 2261.253(e) of the Government Code states, in relevant part, “[a] state agency that *posts a contract on its Internet website as required under* [section 2261.253] shall redact [i]nformation the attorney general determines is excepted from public disclosure] from the posted contract[.]” *See* Gov’t Code § 2261.253(e) (emphasis added). Interpreting subsection 2261.253(e) to allow a state agency to withhold the entirety of a contract that the legislature, in the same section, expressly requires the state agency to post on its internet website is absurd and not consistent with the unambiguous language used by the legislature. Pursuant to the plain language of this subsection, a state agency may not withhold the entirety of a contract subject to section 2261.253. *See Hernandez v. Ebrum*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). *See also* Sen. Comm. on Finance, Bill Analysis, Tex. S.B. 20, 84th Leg., R.S. (2015) (“The purpose of this bill is to reform state agency contracting by clarifying accountability, increasing transparency, and ensuring a fair competitive process.”). Accordingly, the university may not withhold the entirety of the submitted information under section 552.104 of the Government Code.

However, after review of the submitted information and consideration of the university’s arguments, we find the university has established the release of the information we have marked would give advantage to competitors of the university. Thus, we conclude the

university may withhold the information we have marked under section 552.104(a) of the Government Code.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use; [and]

...

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

Gov't Code § 552.139(a), (b)(1)-(2), (4). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). The university states portions of the remaining information provide detailed information regarding RNL's security system, which holds certain university information. The university argues release of the information would provide a roadmap of the network security system that will be in place to protect university information. Based on these arguments and our review of the information, we find portions of the information at issue relate to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the university's computer network. Accordingly, the university must withhold the information we have marked under section 552.139 of the Government Code. However, you have not demonstrated the remaining information relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the computer network as contemplated in section 552.139(a). Further, you have not demonstrated the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the university may not withhold any of the remaining information under section 552.139 of the Government Code.

In summary, the university may withhold the information we have marked under section 552.104(a) of the Government Code. The university must withhold the information we have marked under section 552.139 of the Government Code. The university must release the remaining information.

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/jm

Ref: ID# 975558

Enc. Submitted documents

c: Requestor  
(w/o enclosures)