



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2022

Ms. Audra Gonzalez Welter
Assistant General Counsel
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2903

OR2022-30634

Dear Ms. Welter:

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# 976662 (OGC # 206805).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for contracts between the university and certain compliance hotline and compliance case management system vendors for the last five years. The university claims a portion of the submitted information is excepted from disclosure under section 552.139 of the Government Code. Additionally, the university states release of the submitted information may implicate the proprietary interests of an affected third party. Accordingly, you state, and provide documentation showing, the university notified Navex Global, Inc. ("Navex") 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 Navex. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 2261.253 of the Government Code. This section 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[.]

Gov't Code § 2261.253(a)(1). The contract at issue is between the university, a state agency, and Navex, 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), 2151.002(3) (“state agency” includes institution of higher education as defined by Educ. Code § 61.003). Further, we have no indication the contract and amendments have either expired or been completed. Accordingly, we find the contract at issue is a contract described by section 2261.253. Although Navex raises sections 552.110 and 552.1101 of the Government Code for portions of the contract, we note section 552.0222 of the Government Code provides, in relevant part, as follows:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Id. § 552.0222(b)(1). We have no indication the information at issue was properly redacted under section 2261.253(e). Because section 552.0222 expressly states sections 552.110 and 552.1101 do not apply to a contract described by section 2261.253(a), we do not address Navex's arguments under section 552.110 or 552.1101 for the information at issue.

Navex and the university also raise section 552.139(a) of the Government Code for portions of the submitted information. Section 552.139(d) states “[a] state agency shall redact from a contract posted on the agency's Internet website under Section 2261.253 [of the Government Code] information that is made confidential by, or excepted from required public disclosure under, this section. The redaction of information under this subsection does not exempt the information from requirements of Section 552.021 or 552.221 [of the Government Code].” *Id.* § 552.139(d). Accordingly, we will address the applicability of section 552.139 of the Government Code to the information at issue.

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.

Id. § 552.139(a). 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). Upon review, we find the university has demonstrated the information it has marked relates to the university's computer network security, or to the design, operation, or defense of the university's computer network as contemplated in section 552.139(a). Accordingly, the university must withhold the information it has marked under section 552.139 of the Government Code.

We note Navex claims some of the information 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 it has marked under section 552.139 of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released 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,

Michael Pearle
Assistant Attorney General
Open Records Division

MAP/jxd

Ref: ID# 976662

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)