



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

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

OR2022-33517

Dear Ms. Posey:

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# 981559.

Texas Tech University Health Sciences Center (the "university") received a request for information pertaining to 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 APPSPIRE, Avatar, BEPC, Binsera C, Birdsall Voss, Born Group, Inc. ("Born"), Cosmic Innovations, Delta Group, Geonetric, Infoswift, Inventive Group, Neumeric Tech, New City Media, Schaefer Advertising, V3 Main Tech, Weusthem, and Yoodle. Accordingly, you state, and provide documentation showing, you notified the interested third parties 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 Born.¹ We have considered the submitted arguments and reviewed the submitted information.

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

¹ Although Born raises sections 552.113, 552.131, and 552.143 of the Government Code for its information, Born has not provided any arguments to support these exceptions. Therefore, we assume Born has withdrawn its claim these sections apply to the information at issue. *See* Gov't Code §§ 552.301, .302.

disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining notified third parties have 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 any of the remaining notified third parties may have in the information.

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) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Born argues some of its submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Born has demonstrated some of the submitted information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code.² Nevertheless, we find some of the remaining information at issue is subject to section 552.0222(b) and it may not be withheld on the basis of section 552.110. Therefore, the university may not withhold any of the remaining information at issue under section 552.110 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.”³ Gov't Code § 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. Accordingly, the university must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

We note some of the remaining information 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

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

³ 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).

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 we marked under section 552.110(c) of the Government Code. The university must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The university 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 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,

Sarah E. Reese
Attorney
Open Records Division

SER/pt

Ref: ID# 981559

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)