



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Ms. Audra Gonzalez Welter  
Office of General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-36348

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# 986846 (OGC# 207185).

The University of Texas at Arlington (the "university") received a request for any and all contracts and agreements between the university and a named entity. The university claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the university states release of the submitted information may implicate the proprietary interests of Wells Fargo Bank, NA ("Wells Fargo"). Accordingly, the university states, and provides documentation showing, it notified Wells Fargo of the request for information and of its right to submit arguments to this office. *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 Wells Fargo.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Wells Fargo raises section 552.104 of the Government Code its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information 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

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<sup>1</sup> Although Wells Fargo raises sections 552.112, 552.128, and 552.131 of the Government Code, it provides no arguments explaining the applicability of these exceptions to the information at issue. Therefore, we assume Wells Fargo no longer asserts these exceptions. *See* Gov't Code § 552.305.

situation again in the future.” Gov’t Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3*. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Wells Fargo’s arguments under section 552.104 of the Government Code.

Wells Fargo also raises section 552.113 of the Government Code, which protects certain geological, geophysical, and other information regarding the exploration or development of natural resources. *See id.* § 552.113; *see generally* Open Records Decision No. 627 (1994). Upon review, however, we find Wells Fargo has not demonstrated this exception is applicable to any of its information. Therefore, the university may not withhold any portion of the submitted information under section 552.113 of the Government Code.

Next, 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 submitted contracts and contract amendment are between the university, a state agency, and Wells Fargo, 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 contracts and contract amendment have either expired or been completed. Accordingly, we find the contracts and contract amendment are contracts described by section 2261.253. Although Wells Fargo raises sections 552.110 and 552.1101 of the Government Code for the information at issue, 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 Wells Fargo's arguments under section 552.110 or 552.1101 for the information at issue.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides the following:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181; *see also id.* § 421.001(2) (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The university states the information it indicated consists of detailed floorplans of university buildings and facilities, including technical details of the university mechanical and electrical systems. The university asserts, and we agree, the university's buildings, facilities, and mechanical and electrical systems are critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2). The university asserts release of this information would expose vulnerabilities of the university's critical infrastructure and undermine the security of the university. Based upon these representations and our review, we find the university has demonstrated release of the information it indicated would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the university must withhold the information it indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>2</sup> However, we find Wells Fargo has failed to establish the remaining information reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Therefore, the university may

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<sup>2</sup> As our ruling is dispositive, we need not address Wells Fargo's remaining argument against disclosure of this information.

not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note some of the remaining 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 indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The university must release the remaining information; however, any information subject to 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/pt

Ref: ID# 986846

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Third Party  
(w/o enclosures)