



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2022

Ms. Claudene Marshall
Assistant General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2022-38917

Dear Ms. Marshall:

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# 990001 (ORR# G002410-092022).

The Texas A&M University System (the "system") received a request for information pertaining to a specified contract. Although the system takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Allitix Inc.; Application Software Technology, LLC; Blackline; C3 IT Group LLC; Deloitte Consulting, LLP ("Deloitte"); EPM Intelligence, LLC ("EPM Intelligence"); Excel Global Partners LLC ("EGP"); Grant Thornton; Mindstream Analytics; Perficient; Spaulding Ridge; Tata Consultancy Services Limited; and truED Consulting ("truED"). Accordingly, you state, and provide documentation showing, you notified the 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Deloitte, EGP, and truED. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-31541 (2022). In response to Open Records Letter No. 2022-31541, EPM Intelligence has filed a

lawsuit against our office. *See EPM Intelligence, LLC v. Hon. Ken Paxton, Attorney Gen. of Tex.*, Cause No. D-1-GN-22-006108 (455th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.

With regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, there is no indication the law, facts, and circumstances on which Open Records Letter No. 2022-31541 was based has changed. Accordingly, with regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, we conclude the system must continue to rely on Open Records Letter No. 2022-31541 as a previous determination and withhold and 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 information is or is not excepted from disclosure).

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) of the Government Code 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 any of the remaining third parties explaining why the remaining information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the remaining information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold the remaining information on the basis of any proprietary interest the remaining third parties may have in the information.

In summary, with regard to the information that is the subject of the pending litigation in *EPM Intelligence, LLC v. Hon. Ken Paxton, Attorney Gen. of Tex.*, Cause No. D-1-GN-22-006108, we will allow the trial court to resolve the issue of whether the information that is the subject of pending litigation must be released to the public. With regard to any information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, we conclude the system must continue to rely on Open Records Letter No. 2022-31541 as a previous determination and withhold and release the identical information in accordance with that ruling. The system must release the remaining information.

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

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/pt

Ref: ID# 990001

Enc. Submitted documents

c: Requestor
(w/o enclosures)