



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2013

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2013-14909

Dear Ms. Angadicheril:

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# 497595 (UT OGC# 150341).

The University of Texas Southwestern Medical Center (the "university") received a request for a specified contract and proposals for medical necessity checking software and a contract and proposals for beds and stretchers. You inform us the requestor has withdrawn his request for the contract and proposals for beds and stretchers. You also state the university has no information responsive to the portion of the request seeking the specified contract for medical necessity checking software.¹ Although you state the university takes no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Craneware, Inc. ("Craneware") and MedAssets New Revenue System, L.L.C. ("MedAssets"). Accordingly, you state and provide documentation showing, you have notified Craneware and MedAssets of the request for information and of their 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

¹The 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).

released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

Initially, we must address the university's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the university received this request on June 7, 2013. However, you did not submit a copy of the proposal submitted by MedAssets until August 9, 2013. Consequently, we find the university failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether the untimely submitted information is excepted from disclosure under the Act.

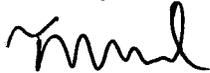
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Craneware or MedAssets explaining why any of their requested information should not be released. Therefore, we have no basis to conclude these companies have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any portion of the submitted information on

the basis of any proprietary interests these companies may have in the information. As no exceptions to disclosure were raised, the submitted information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 497595

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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