



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2015

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2015-05706

Dear Ms. Tynan:

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# 557452 (OGC# 159624).

The University of Texas System (the "system") received a request for (1) "all contracts executed with Deltak, Pearson, Ebanent Compass, Pearson Embanet, Everspring Inc., and Blackboard," and (2) "any proposal submitted to a [r]request [f]or [p]roposal[s] issued by the university from Deltak, Pearson, Embanent Compass, Pearson Embanet, Everspring Inc., and Blackboard." The system claims some of the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. Additionally, the system states release of the submitted information may implicate the proprietary interests of Blackboard, Inc. ("Blackboard"), Pearson eCollege ("Pearson"), and Wiley Global Education ("Wiley"). Accordingly, the system states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested 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 Blackboard and Wiley. We have considered the submitted arguments and reviewed the submitted information.

Initially, the system states some of the responsive information was the subject of two separate previous requests for information in response to which this office issued Open Records Letter Nos. 2012-09626 (2012) and 2014-18703 (2014). In Open Records Letter No. 2012-09626, we determined, in part, the system may withhold the information at issue under section 552.104 of the Government Code. In Open Records Letter No. 2014-18703, we determined the system may withhold the information at issue under section 552.104. The system informs us the law, facts, and circumstances on which the prior rulings were based have not changed. Accordingly, the system may continue to rely on Open Records Letter Nos. 2012-09626 and 2014-18703 as previous determinations and withhold the identical information at issue in accordance with those rulings.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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter Nos. 2012-09626 and 2014-18703, we will consider the submitted arguments against 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) 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 Pearson explaining why its information should not be released. Therefore, we have no basis to conclude Pearson has a protected proprietary interest 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest Pearson may have in the information.

Wiley raises section 552.104 of the Government Code. We note this section protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 (1991). Accordingly, we will address the system's argument under section 552.104, but, because section 552.104 does not protect the interests of third parties, we will not address Wiley's argument under this exception.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of

¹As our ruling is dispositive, we need not address Blackboard's arguments against disclosure of this information.

a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* ORD 592 (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

The system states Wiley's submitted information relates to a request for proposals for which a winning bidder has not been selected. The system further states a contract relating to the services at issue in this request for proposals has not been executed. The system argues release of the information it has marked would harm its ability to negotiate the best possible terms for the contract. Based on these representations and our review of the information at issue, we conclude the system may withhold the information it has marked under section 552.104 of the Government Code until such time as a contract has been executed.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the expense of others and could be detrimental to public interest in contract under negotiation).

Section 552.139 provides, in part, as follows:

(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.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information

²As our ruling is dispositive, we need not address Wiley's arguments against disclosure of this information.

containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a)-(b). Section 2059.055(b) of the Government Code provides the following, in pertinent part:

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 state agency;
- (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). The system states Pearson was the winning bidder in response to a request for proposals regarding information technology services, and in particular, the ability to host and manage Online Education Services. The system asserts the information it has marked contains detailed information regarding Pearson's data centers, operation of the software, guidelines on how to use the software, information regarding disaster recovery, maintenance and backup schedules, an audit report regarding security, and security systems in place to ensure protection of system data in the hands of Pearson. Therefore, the system argues release of the information it marked would make the system's data vulnerable to unauthorized access or harm. Based on these representations and our review, we find the information the system has marked relates to computer network security, and the design, operation, or defense of the system's computer network. Accordingly, the system must withhold the information it marked under section 552.139(a).

In summary, the system may continue to rely on Open Records Letter Nos. 2012-09626 and 2014-18703 as previous determinations and withhold the identical information at issue in accordance with those rulings. The system may withhold the information it has marked under section 552.104 of the Government Code until such time as a contract has been executed. The system must withhold the information it has marked under section 552.139(a) of the Government Code. The remaining 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 557452

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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