



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-09181

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# 563191 (OGC No. 160525).

The University of Texas at Austin (the "university") received a request for the award information regarding RFP No. 721-1420, Identity Access Management Software. You state the university will release some information. Although you take no position as to whether the remaining requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Identity Automation, L.P., NetIQ, Oracle America, Inc., Saviynt, L.L.C., and SailPoint Technologies, Inc. ("SailPoint"). Accordingly, you notified these third parties of the request for information and of each company's 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 Act in certain circumstances). We have received comments from SailPoint. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of

this letter, we have only received comments from SailPoint on why the company's submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); 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 the remaining third parties may have in it.

Section 552.139(a) of the Government Code exempts from disclosure "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." Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in part:

(b) 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). SailPoint argues the submitted information relates to computer network security. However, upon review, we find SailPoint has not demonstrated the submitted information, which consists of the university's bid evaluation matrix and a contract between SailPoint and the university, contains any information related to computer network security, or to the design, operation, or defense of a computer network for purposes of section 552.139(a). Accordingly, the university may not withhold any portion of the submitted information on that basis.

SailPoint also raises section 552.110(b) of the Government Code. This section exempts from disclosure "[c]ommercial 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." *Id.* § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations,

that substantial competitive injury would likely result from release of the requested information. *See* ORD 661.

SailPoint contends its pricing information and the submitted contract contain commercial or financial information, the release of which would cause substantial competitive harm to the company. We note SailPoint was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). In addition, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3); Open Records Decision No. 541 at 8 (1990). Accordingly, we find SailPoint has not established any of the information at issue constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. *See* Gov't Code § 552.110(b). Therefore, the university may not withhold any of the submitted information at issue on this basis. As no further exceptions to disclosure have been raised, the university must release the submitted 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 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 563191

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Dallas, Texas 75201
(w/o enclosures)