



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2015

Ms. Audra Gonzalez Welter
Attorney & Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-12275

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# 568126 (OGC# 161109 and OGC# 161111).

The University of Texas at El Paso (the "university") received two identical requests for the information released in response to "Request ID 3778." You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Services Solutions Corporation ("SSC"). Accordingly, you state, and provide documentation showing, you notified SSC of the request for information and of its right to submit arguments to this office as to why the information at issue 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 considered the submitted arguments and reviewed the submitted information.

You inform us the submitted information was previously released to a different requestor last year. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the

Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the university may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. The university claims section 552.104 of the Government Code for the information at issue. Section 552.104 is a discretionary exception to disclosure and may be waived. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the submitted information may not be withheld under section 552.104. However, because third party interests can provide a compelling reason against disclosure, we will consider whether the submitted information may be withheld based on the interests of SSC. Additionally, we note the submitted documents contain information subject to section 552.136 of the Government Code, which makes information confidential under law.¹ Thus, we also will consider the applicability of section 552.136 to the submitted information.

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 not received any comments from SSC explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude SSC has any protected proprietary interest in the 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. Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interests SSC may have in the information.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). The university must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the remaining information 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released; however, any information protected by 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 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 568126

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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