



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Michele Freeland  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2015-21651

Dear Ms. Freeland:

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# 583336 (DPS PIR# 15-3780).

The Texas Department of Public Safety (the "department") received a request for all vendor responses to a specified request for information. Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Information Builders; Altiscale; Carahsoft Technology Corporation; Datameer; FICO; Globlue Technologies, L.L.C.; Hitachi Data Systems; HP Enterprise Services, L.L.C.; Informatica Corporation; LexisNexis; Microsoft Services; and Numerica Corporation. Accordingly, you state, and provide documentation showing, the department notified these parties of the request for information and of their rights 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) (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 received comments from FICO. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 only received comments from FICO explaining why its 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 information at issue. *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 department may not withhold any of the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

FICO raises section 552.104 of the Government Code for sections 2 and 3 of its information. Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at \*9. FICO states it has competitors. In addition, FICO states it would suffer substantial harm to its competitive position in the marketplace if its confidential and proprietary commercial information were disclosed to the public. After review of the information at issue and consideration of the arguments, we find FICO has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold sections 2 and 3 of FICO's information under section 552.104(a).<sup>1</sup>

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 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 department may withhold sections 2 and 3 of FICO's information under section 552.104(a) of the Government Code. The department must release the remaining

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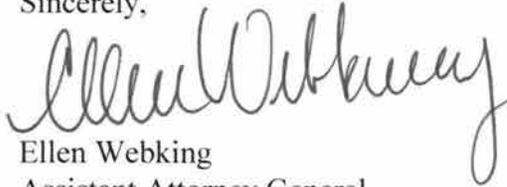
<sup>1</sup>As our ruling is dispositive, we need not address FICO's remaining argument against disclosure of this information.

information, but may release any copyrighted information only 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 583336

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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FICO  
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Roseville, Minnesota 55113  
(w/o enclosures)

Mr. Greg Molina  
Information Builders  
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Altiscale  
c/o Michele Freeland  
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