



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2016

Mr. R. Brooks Moore
Managing Counsel - Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2016-17677

Dear Mr. Moore:

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# 621489 (W000884-051616).

Texas A&M University (the "university") received a request for two specified contracts. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Ellucian Company, LP ("Ellucian") and Blackboard Inc. ("Blackboard"). Accordingly, you state, and provide documentation showing, you notified Ellucian and Blackboard of the request for information and of their 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 received arguments from Ellucian. Ellucian asserts some information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the arguments and 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(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). You state the university received the request for information on May 16, 2015. We note the university was closed on May 30, 2016, for Memorial Day. This office does not count the date the request was received or dates the governmental body was closed as business days for the purpose of

calculating a governmental body's deadlines under the Act. Accordingly, the university's ten-business-day deadline was May 31, 2016. The envelope in which this information was submitted bears a post-office mark of June 1, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the submitted information is excepted 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Blackboard has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of Blackboard, and the university may not withhold any portion of the submitted information at issue on the basis of any proprietary interest Blackboard may have in it. *See* 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.

Next, we note the submitted information consists of contracts for the purchase of services from private vendors that are subject to the posting requirements in section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted contracts, valued at more than \$15,000, are between the university, which is a state agency, and private vendors for the purchase of services, and the contracts are not expired or completed. *See id.* §§ 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002), 2151.002(3) ("state agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the submitted contracts are required to be posted on the university's internet website. Although Ellucian seeks to withhold portions of the submitted information under sections 552.104 and 552.110 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).* Accordingly, the university must release the submitted contracts in their entirety.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/bhf

Ref: ID# 621489

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)