



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2013

Mr. R. Brooks Moore
Managing Counsel, Governance
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2013-02678

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# 478905 (TAMU System ID# SO-12-119).

The Texas A&M University System (the "system") received a request for copies of the proposals submitted by any of nineteen specified entities to Texas A&M University for the following requests for proposals: OGC-12-007, OGC-12-008, OGC-12-009, and OGC-12-010. We understand you to claim portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code.¹ Additionally, although we understand the system takes no position with respect to the remaining submitted information, you state its release may implicate the interests of ARAMARK Educational Services of Texas, LLC ("ARAMARK"). Accordingly, you state, and provide documentation demonstrating, the system notified ARAMARK of the request for information and of its right to submit arguments stating why its 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on

¹Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings.

interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and have reviewed the submitted information.

Initially, you state and we agree, some of the requested information was the subject of previous requests for information. As a result of these requests, this office issued Open Records Letter Nos. 2012-17662 (2012), 2012-18433 (2012), and 2012-18440 (2012). In Open Records Letter No. 2012-17662, we ruled the system must withhold the information we marked under section 552.136 of the Government Code and release the remaining information in accordance with copyright law. In Open Records Letter No. 2012-18433, we ruled the system must withhold the information we marked under sections 552.110, 552.130, and 552.136 of the Government Code and release the remaining information in accordance with copyright law. In Open Records Letter No. 2012-18440 (2012), we ruled the system may withhold certain privileged information under section 552.107(1) of the Government Code, must withhold the information we marked under sections 552.110 and 552.136 of the Government Code, and must release the remaining information. As we have no indication that the law, facts, and circumstances on which these prior rulings were based have changed, the system must continue to rely on these prior rulings as previous determinations and withhold or release the information we have previously ruled on in accordance with Open Records Letter Nos. 2012-17662, 2012-18433, and 2012-18440. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, because you inform us the submitted information is not encompassed by the previous determinations, we will address your argument against disclosure of this information.

Next, the system acknowledges, and we agree, the system did not comply with its ten or fifteen business-day deadlines under section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b), (e). 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the system's claim under section 552.136 of the Government Code can provide a compelling reason for non-disclosure and because third-party interests are at stake, we will address the system's argument under that exception, as well as consider any arguments submitted by the third party.

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, this office has not received comments from ARAMARK explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate ARAMARK's interests. *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, we conclude the system may not withhold any of the submitted information on the basis of any interest ARAMARK may have in the information.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the system must withhold the insurance policy numbers you have marked under section 552.136.

We note some of the remaining information appears to 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 system must continue to rely on Open Records Letter Nos. 2012-17662, 2012-18433, and 2012-18440 as previous determinations and withhold or release the information we have previously ruled on in accordance with these prior rulings. The system must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. The system must release the remaining information; 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 478905

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)