



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2013

Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2013-06786

Dear Ms. Angadicheril:

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# 486244 (University OGC# 148755).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to a specified request for proposals. You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of A&F Elevator Company, Inc.; EMR Elevator, Inc.; KONE, Inc. ("KONE"); and Otis Elevator Company. Accordingly, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why their 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 the Act in certain circumstances). You have submitted comments from KONE. We have considered the submitted arguments and reviewed the submitted information.

We note that 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

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<sup>1</sup>Although 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.

relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have only received comments from KONE. Thus, we find the remaining interested third parties have not demonstrated that they have a protected proprietary interest in any of their 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 of the remaining third parties' information on the basis of any proprietary interests these third parties may have in their information.

Section 552.110(b) of the Government Code protects “[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[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

KONE claims that some of its submitted information is protected by section 552.110(b). Upon review, we find KONE has established the customer and pricing information we have marked constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, the university must withhold this information under section 552.110(b) of the Government Code. However, we find KONE has made only conclusory allegations that release of any of its remaining information would result in substantial harm to its competitive position and has provided no factual or evidentiary showing to support such allegations. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3. Consequently, the university may not withhold any of KONE's remaining information under section 552.110(b) of the Government Code.

Section 552.136(b) 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 concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Although you seek to withhold the requestor's company's own insurance policy numbers, we note the requestor has a right of access to this information. *See id.* § 552.023 (person or person's authorized representative has special right of access to information held by a governmental body that relates to person and is protected from public

disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987). Therefore, with the exception of the requestor's company's own insurance policy numbers, the university must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.

We note some of the submitted 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 university must withhold the information we have marked under section 552.110(b) of the Government Code. With the exception of the requestor's company's own insurance policy numbers, the university must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. The university must release the remaining information; however, any copyrighted information only may 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/tch

Ref: ID# 486244

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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