



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Katherine R. Fite
Assistant General Counsel
Texas Department of Information Resources
P.O. Box 13564
Austin, Texas 78711-3564

OR2016-16873

Dear Ms. Fite:

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# 618359.

The Texas Department of Information Resources (the "department") received a request for all final technology statements of work submitted to the department since January 30, 2016 by certain state agencies for specified services pursuant to a specified legislative directive. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the interests of the Employee Retirement System of Texas ("ERS"), the Office of Consumer Credit Commissioner (the "OCCC"), and the Texas Department of Licensing and Regulation ("TDLR"). Accordingly, you state you notified the third parties 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 § 552.304 (interested party may submit written comments stating why information should or should not be released). We have received comments from TDLR.¹ We have also received comments from MicroPact, an interested third party. *See id.* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should

¹We note TDLR does not object to disclosure of its information. As of the date of this letter, we have not received comments from ERS or the OCCC.

not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor seeks information submitted to the department since January 30, 2016. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2(1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the department maintained or had a right of access to as of the date it received the request.

We note the submitted information consists of statements of work that are subject to the posting requirements in section 2157.0685 of the Government Code. Section 2157.0685 provides, in relevant part, as follows:

(b) For a contract awarded by the department under Section 2157.068 that requires a state agency to develop and execute a statement of work to initiate services under the contract, the state agency must:

...

(2) post each statement of work entered into by the agency on the agency's Internet website in the manner required by department rule.

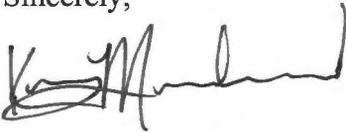
Gov't Code § 2157.0685(b)(2). We note the submitted information pertains to contracts awarded by the department under section 2157.068 of the Government Code. *See id.* § 2157.068 (relating to the purchase of information technology commodity items). The submitted statements of work were developed and executed by ERS, the OCCC, and TDLR, which are state agencies. *See id.* § 2151.002 ("state agency" includes a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute). Accordingly, the submitted statements of work are required to be posted on the state agencies' Internet websites. MicroPact seeks to withhold portions of one of the submitted statements of work under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.104 of the Government Code. We note information a statute specifically makes public generally may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Further, when a statute directly conflicts with a common law principle or claim, the statutory provision controls and preempts common law. *See Collins v. Tex Mall, L.P.*, 297

S.W.3d 409, 415 (Tex. App.-Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy or section 552.104 of the Government Code. As no further exceptions to disclosure have been raised, the department must release the submitted statements of work 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 618359

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)