



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Destinee Waiters
General Counsel
Texas Woman's University
P.O. Box 425497
Denton, Texas 76204-5497

OR2016-16875

Dear Ms. Waiters:

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# 620414.

The Texas Woman's University (the "university") received two requests for the responses to RFP-731-16-026-KV Laundry Services. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of two third parties might be implicated. Accordingly, you notified WASH Multifamily Laundry Systems, LLC ("WASH") and Caldwell & Gregory ("Caldwell") of the requests and of their right to submit arguments to this office explaining why the information at issue 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); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from WASH. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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) 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 not received comments from

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Caldwell explaining why the submitted information should not be released. Therefore, we have no basis to conclude Caldwell has a protected proprietary interest in the submitted information. *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 university may not withhold the submitted information on the basis of any proprietary interest Caldwell may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). A private third party may invoke this exception. *Id.* WASH states it has competitors. WASH argues release of portions of its information would provide a “substantial advantage” to WASH’s competitors in future bidding situations. After review of the information at issue and consideration of the arguments, we find WASH has established the release of the information at issue would give advantage to a competitor or bidder. Thus, the university may withhold the portions of WASH’s information we marked pursuant to section 552.104(a) of the Government Code.²

Next, WASH states portions of its information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) 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* Open Records Decision No. 661 at 5 (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).

WASH argues portions of its information consist of commercial information the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find WASH has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the university must withhold this information, which we marked, under section 552.110(b) of the Government Code.

²As our ruling is dispositive, we need not address WASH’s remaining argument against disclosure of this information.

The remaining documents include information that is subject to section 552.136 of the Government Code.³ Section 552.136 of the Government Code provides, “Notwithstanding 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 determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the university must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.⁴

In summary, the university may withhold the portions of WASH’s information we marked pursuant to section 552.104(a) of the Government Code. The university must withhold the information we marked under section 552.110(b) of the Government Code. The university must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/dls

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Ref: ID# 620414

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)