



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2020

Mr. John R. Mercy
Counsel for Texarkana College
Mercy Carter, L.L.P.
1724 Galleria Oaks Drive
Texarkana, Texas 75503

OR2020-09611

Dear Mr. Mercy:

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# 819117.

Texarkana College (the "college"), which you represent, received a request for information pertaining to a specified contract.¹ You state the college will release some information. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Jenzabar, Inc. ("Jenzabar"). Accordingly, you state, and provide documentation showing, you notified Jenzabar of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although you argue some of the submitted information is excepted under section 552.110,

¹ You state the college sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the college's argument under section 552.110.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comment from Jenzabar. Thus, we have no basis to conclude Jenzabar 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 college may not withhold the submitted information on the basis of any proprietary interest Jenzabar may have in it.

We note 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. As no further exceptions to disclosure have been raised, the college must release the submitted information; however, any information subject to 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/jlbm

Mr. John R. Mercy- Page 3

Ref: ID# 819117

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)