



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Ms. Rebecca R. Cavazos
Director of Purchasing
South Texas College
3201 West Pecan Boulevard
McAllen, Texas 78501

OR2020-10157

Dear Ms. Cavazos:

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# 819759.

South Texas College (the "college") received a request for specified information pertaining to a specified college project. You state you are releasing some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of 5 Star GC Construction, LLC ("5 Star"); Holchemont, Ltd. ("Holchemont"); Noble Texas Builders ("Noble"); R.E. Friedrichs Co.; Tri-Gen Construction, LLC; WILCON; and Synergy Builders of Texas.¹ Accordingly, you state, and provide documentation showing, you notified these 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 § 552.305(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 received arguments from 5 Star, Holchemont, and Noble. We have considered the submitted arguments and reviewed the submitted information.

¹ We note the college did not comply with the requirements of section 552.301(b) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(b). Nonetheless, we note the interests of a third-party can provide compelling reasons to overcome the presumption of openness. Accordingly, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

We note 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) of the Government Code 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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 any portion of the submitted information related to those third parties on the basis of any proprietary interest they may have in the information.

Initially, we note 5 Star seeks to withhold information not submitted to this office by the college. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the college, this ruling does not address this information and is limited to the information submitted as responsive by the college.²

Holchemont raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information "if *a governmental body* demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address Holchemont's arguments under section 552.104 of the Government Code.

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See* Gov't Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

² As we are able to make this determination, we need not address 5 Star's arguments against disclosure of this information.

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). 5 Star, Holchemont, and Noble argue portions of their information consist of trade secrets subject to section 552.110(b). Upon review, we find Noble has demonstrated its customer information constitutes trade secrets. Accordingly, the college must generally withhold Noble’s customer information under section 552.110(b) of the Government Code. However, to the extent any of the customer information Noble seeks to withhold has been published on the company’s website, such information is not confidential under section 552.110(b). Additionally, we find 5 Star, Holchemont, and Noble have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the college may not withhold any of 5 Star’s, Holchemont’s, and Noble’s information under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “commercial 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[.]” *Id.* § 552.110(c). 5 Star, Holchemont, and Noble argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Holchemont and Noble have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the college must withhold the information we indicated under section 552.110(c) of the Government Code. However, we find 5 Star, Holchemont, and Noble have failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the college may not withhold any of 5 Star’s, Holchemont’s, or Noble’s remaining information at issue under section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

- (B) organizational structure;
- (C) staffing;
- (D) internal operations;
- (E) processes; or
- (F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). 5 Star asserts disclosure of some of its information would reveal an individual approach to work and give advantage to a competitor. However, upon review, we find 5 Star has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the college may not withhold it on that basis.

Section 552.136(b) of the Government Code states “[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.”³ *Id.* § 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. *See* Open Records Decision No. 684 at 9 (2009). Thus, the college must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, to the extent the information is not published on Noble’s website, the college must withhold Noble’s customer information under section 552.110(b) of the Government Code. The college must withhold the information we indicated under section 552.110(c) of the Government Code. The college must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The college must release the remaining information.

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

³ The 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).

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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/eb

Ref: ID# 819759

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)