



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2020

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road, Building One
Cedar Park, Texas 78613

OR2020-11175

Dear Ms. Quinn:

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# 822771.

The City of Cedar Park (the "city") received a request for seven categories of information pertaining to a specified request for proposals.¹ You state the city is 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 Central Texas Refuse, Inc. ("Central"); HHW Solutions; Waste Connections; and Waste Management of Texas, Inc. ("Management"). 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 Central and Management. We have considered the submitted arguments and reviewed the submitted information.

¹ We note the city 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).

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 city 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 Central seeks to withhold information not submitted to this office by the city. By statute, this office may rule on the public availability only 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 the information at issue was not submitted by the city, this ruling does not address this information and is limited to the information submitted as responsive by the city.

Central and Management raise section 552.104 of the Government Code for portions of their 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." *Id.* § 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 consider Central's and Management'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:

- (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). Management argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Management has demonstrated its customer information constitutes trade secrets. Therefore, the customer information at issue must generally be withheld under section 552.110(b) of the Government Code. However, to the extent any of the customer information Management seeks to withhold has been published on the company's website, such information is not confidential under section 552.110(b). Additionally, we find Management has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the city may not withhold any of the remaining information at issue 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). Central and Management argue some of their remaining information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Central and Management have demonstrated the information we marked and indicated constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked and indicated information under section 552.110(c) of the Government Code. However, we find Central and Management have failed to provide specific factual evidence demonstrating their remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Central also asserts portions of its information are excepted under section 552.111 of the Government Code. This section excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This section incorporates the deliberative process and attorney work product privileges. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision Nos. 677 at 4-8 (2002), 615 at 2 (1993). However, section 552.111 is a discretionary exception that is designed to protect only the interests of governmental bodies rather than third parties. Accordingly, we do not consider Central's argument under this exception. Furthermore, section 552.111 may be raised or waived by a governmental body at its discretion. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475 (Tex. App.—Dallas 1999, no pet.) (noting section 552.007 provides governmental body may choose not to raise exception and may voluntarily disclose information not confidential by law); *Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied) (noting government agency may waive permissive exception and release information unless release is expressly prohibited by law or information is confidential under law); Open Records

Decision Nos. 663 (1999) (section 552.111 may be waived by governmental body), 522 at 4 (1990) (discretionary exceptions in general). Because the city has not raised section 552.111, we find section 552.111 is inapplicable to the submitted information, and no portion of Central's information may be withheld 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."¹ *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 city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, to the extent Management's customer information has not been published on the company's website, the city must withhold Management's customer information under section 552.110(b) of the Government Code. The city must withhold the information we marked and indicated under section 552.110(c) of the Government Code. The city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city 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 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/be

¹ 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).

Ref: ID# 822771

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)