



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2020

Ms. Detra Whitmore
Vice President Customer Experience
Fort Worth Transportation Authority
801 Cherry Street, Suite 850
Fort Worth, Texas 76102

OR2020-11323

Dear Ms. Whitmore:

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# 820090 (PIA No. TMOR2020-002).

The Fort Worth Transportation Authority (the "authority") received a request for information pertaining to RFP #19-T021, including proposals received and the current contract, as well as particular revenue data from a specified time period.¹ Although we understand the authority takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Adsplosure, Outdoor Media Group, Creative Outdoor Advertising of America, Mesmerize, Clear Channel Outdoor ("CCO"), and Lamar Advertising. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information 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); 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 CCO. We have considered the submitted arguments and reviewed the submitted information.

¹ We note the authority 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).

Initially, we note the authority has not submitted the requested revenue data. To the extent information responsive to this portion of the request existed on the date the authority received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we understand the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-26654 (2019). In Open Records Letter No. 2019-26654, we determined the authority may withhold certain information under section 552.104(a), must withhold certain information under section 552.110(b), and must release the remaining information. You note, and we agree, since the previous ruling was issued, the law regarding sections 552.104 and 552.110 has changed. Therefore, because the law has changed with respect to the information at issue, the authority may not rely on Open Records Letter No. 2019-26654 as a previous determination and withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments against disclosure of the submitted information.

Next, 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party 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 authority may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

CCO 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 CCO's arguments under section 552.104.

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

- (a) Except as provided by Section 552.0222, information 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.

- (b) The exception to disclosure provided by Subsection (a) does not apply to:

- (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

- (2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). CCO asserts disclosure of some of its information would reveal an individual approach to its work, organization structure, staffing, and internal operations, as well as pricing that will be used in future solicitations or bid documents. Upon review, we find CCO has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the authority must withhold the information we have marked under section 552.1101 of the Government Code.² However, we find CCO 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 authority may not withhold it on that basis.

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 id.* § 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). CCO argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find CCO has demonstrated its customer information constitutes trade secrets. Therefore, to the extent CCO's customer information is not publicly available on its website, the authority must withhold CCO's customer information under section 552.110(b) of the Government Code.³ However, we find CCO has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret.

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). CCO argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find CCO has 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 authority may not

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

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withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.⁴ *See id.* § 552.130. Accordingly, the authority must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

Section 552.136 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the authority must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. 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.

In summary, the authority must withhold the information we have marked under section 552.1101 of the Government Code. To the extent CCO's customer information is not publicly available on the company's website, the authority must withhold CCO's customer information under section 552.110(b) of the Government Code. The authority must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The authority must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The authority must release the remaining information; however, any information protected by 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.

⁴ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jlbm

Ref: ID# 820090

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)