



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2020

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2020-11431

Dear Mr. Gomez:

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# 823347 (File No. 20002.8).

Texas State University (the "university") received a request for proposals, excluding the requestor's company, and scoring information pertaining to a specified bidding situation.¹ You state the university has released some of the requested information. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of 160 Over 90 ("160"); CJB Designs; Compulabs Etc., LLC; Cocolevio, LLC ("Cocolevio"); Demlan Solutions d/b/a Favor Consulting, Inc.; and Pixelware Studios ("Pixelware"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request and their right to submit arguments to this office. *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 comments from 160, Cocolevio, and Pixelware. We have considered the submitted arguments and reviewed the submitted information.

¹ The university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Initially, we note some of the information you have submitted is not responsive to the instant request because it pertains to the requestor's company which he specifically excluded from the request. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release such information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No.452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

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 Gov't Code § 552.305(d)(2)(B)*. As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have 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 any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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[.]"² Gov't Code § 552.110(c). Cocolevio argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Cocolevio has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must generally withhold the information we marked under section 552.110(c) of the Government Code.³ However, to the extent any of the customer information Cocolevio seeks to withhold has been published on the company's website, such information is not confidential and may not be withheld under section 552.110(c). Further, we find Cocolevio 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 university may not withhold any of the remaining information at issue under section 552.110(c) 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

² Although Cocolevio cites to section 552.110(b) in its brief, we understand it to argue 552.110(c) based on the substance of its arguments.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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). 160 and Cocolevio argue some of their information consists of trade secrets subject to section 552.110(b). However, we find 160 and Cocolevio have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(b) 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). Pixelware asserts disclosure of some of its information would reveal an individual approach to its work, organization, staffing, processes, and pricing and give

advantage to a competitor. However, we find Pixelware 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 university may not withhold it on that basis.

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent any of Cocolevio's customer information has been published on the company's website, such information may not be withheld under section 552.110(c). The university must release the remaining information.⁴

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 823347

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).