



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 22, 2020

Ms. Mollie Lerew  
Interim Civil Chief  
Wichita County  
900 Seventh Street, Room 352  
Wichita Falls, Texas 76301-2482

OR2020-11497

Dear Ms. Lerew:

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# 823574 (ORR.02243).

Wichita County (the "county") received a request for certain information pertaining to a specified request for proposals. You state the county does not have information responsive to a portion of the request.<sup>1</sup> Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Southwest Correctional Medical Group, Inc. ("SCMG").<sup>2</sup> Accordingly, you state, and provide documentation demonstrating, the county notified SCMG of the request for information and of its right to submit arguments to this office as to why the submitted information 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 comments from SCMG. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Although you do not raise any arguments in your brief to this office, we note you have marked portions of the information at issue under section 552.104 of the Government Code. However, because you make no arguments to support this exception, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

SCMG raises section 552.104 of the Government Code for a portion of its information at issue. 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 SCMG’s arguments under section 552.104 of the Government Code.

SCMG raises section 552.110 of the Government Code for portions of its information at issue.<sup>3</sup> 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). SCMG argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find SCMG has demonstrated portions of the information at issue, including its client reference information, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we marked and, to the extent it is not publicly available on SCMG’s website, the client reference information we marked and indicated under section 552.110(c) of the Government Code.<sup>4</sup> However, we find SCMG 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 county 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 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

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<sup>3</sup> Although SCMG cites to former sections 552.110(a) and 552.110(b) of the Government Code in its briefing to this office, we understand SCMG to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(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). SCMG argues some of its remaining information consists of trade secrets subject to section 552.110(b). However, to the extent the client reference information we marked and indicated is publicly available on SCMG's website and not excepted from disclosure under section 552.110(c), the county may not withhold such information under section 552.110(b) of the Government Code. Additionally, upon review, we find SCMG has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.136(b) of the Government Code provides, "[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 government body is confidential."<sup>5</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information appears to 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.

In summary, the county must withhold the information we marked and, to the extent it is not publicly available on SCMG's website, the client reference information we marked and indicated under section 552.110(c) of the Government Code. The county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The county must release the remaining 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.

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<sup>5</sup> 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).

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/eb

Ref: ID# 823574

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)