



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 23, 2020

Ms. Maya Godbold  
Manager, Records & Analytics  
Lonestar College  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2020-11504

Dear Ms. Godbold:

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# 824056 (Ref. No. 20-149).

The Lone Star College System (the "system") received a request for the contract, cost and technical proposals, and evaluation documents for a specified request for proposals. You state the system has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of Watermark Insights, LLC ("Watermark"). Accordingly, the system states, and provides documentation showing, it notified Watermark 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(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 Watermark. We have considered the submitted arguments and reviewed the submitted information.

Watermark and the system raise section 552.104 of the Government Code for some of the submitted 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). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). In *Boeing*, 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 Watermark’s arguments under section 552.104. Further, after review of the information at issue and consideration of the arguments, we find the system has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the system may not withhold the information at issue under section 552.104(a).

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). Watermark asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing, and give advantage to a competitor. Upon review, we find Watermark has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the system must withhold the information we indicated under section 552.1101 of the Government Code.<sup>1</sup> However, we find Watermark 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 system 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). Watermark argues its remaining information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find Watermark has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the system may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the system must withhold the information we indicated under section 552.1101 of the Government Code. The remaining information must be released.

Finally, you ask this office to issue a previous determination that would permit the system to withhold the pricing information of disappointed bidders under section 552.104(a) of the Government Code without the necessity of requesting a decision from this office. *See Open Records Decision No. 673 (2001)* (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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>1</sup> As our ruling is dispositive, we need not address Watermark’s remaining argument against disclosure of this information.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/jlbn

Ref: ID# 824056

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)