



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

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

OR2020-12730

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# 822434 (TSU File No. 20002.32).

Texas State University (the "university") received a request for any and all current services contracts with three named entities. Although the university takes no position regarding whether the submitted information is excepted from disclosure under the Act, the university informs us its release may implicate the proprietary interests of Compass Group USA, Inc. d/b/a Chartwells and Southeast Service Corporation (collectively, "Compass"). Accordingly, the university states, and provides documentation showing, it notified Compass of the request for information and of its 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 Compass. We have considered the submitted arguments and reviewed the submitted information.

Initially, although Compass claims the information it indicated is not responsive to the instant request, we note this information consists of a services contract with one of the named entities. Upon review, we find the entirety of the submitted information is responsive to the instant request for information. However, we will consider Compass' arguments against disclosure of the information at issue.

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Compass argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Compass 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 withhold the information we marked under section 552.110(c) of the Government Code.¹ However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). 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, “[e]xcept as provided by [s]ection 552.0222, 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Compass argues some of its remaining information consists of trade secrets subject to section 552.110(b). However, as noted above, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). 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:

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(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.

(a) 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). Compass asserts some of its remaining information would reveal an individual approach to Compass' work, organizational structure, staffing, internal operations, processes, discounts, pricing methodology, cost data, and other pricing information and give advantage to a competitor. However, as noted above, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.*

§ 552.0222(b). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code. The university 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/eb

Ref: ID# 822434

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)