



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2020

Mr. R. Brooks Moore
Deputy General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2020-12906

Dear Mr. Moore:

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# 823461 (Ref. No. D000253-013020).

Texas A&M University Corpus Christi (the "university") received a request for all contracts with Compass Group USA, Inc. ("Compass"). Although the university takes no position as to whether the submitted information is excepted under the Act, the university states release of the submitted information may implicate the proprietary interests of Compass. Accordingly, the university states, and provides documentation showing, it notified Compass 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 Compass. We have considered the submitted arguments and reviewed the submitted information.

Section 552.1101(a) of the Government Code excepts from disclosure "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[.]*" Gov't Code § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Compass raises section 552.1101 for portions of the submitted contracts. Upon review, we find Compass has failed to demonstrate the applicability of section 552.1101(a) to the

information at issue. Accordingly, the university may not withhold any of the submitted information under section 552.1101(a).

Compass also asserts some of the submitted information is excepted from disclosure pursuant to section 552.110 of the Government Code. 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].

Id. § 552.110(c). Additionally, we note section 552.0222(b) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Compass argues the information at issue 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 some of 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). Additionally, we find Compass has failed to provide specific factual evidence demonstrating any portion of the rest of 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, “[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). Compass argues the remaining information at issue consists of trade secrets subject to section 552.110(b). However, as noted above, a portion of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis

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

of section 552.110(b). Additionally, we find Compass has failed to provide specific factual evidence demonstrating any portion of the rest 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.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/eb

Ref: ID# 823461

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)