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ATTORNEY GENERAL OF TEXAS

May 11, 2020

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2020-13316

Dear Ms. Tynan:

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# 824325 (OGC Nos. 195234 and 195458).

The University of Texas at Austin (the "university") received two requests from different requestors for specified contracts, including all information pertaining to a specified agreement.¹ 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 the following third parties: Austin Arena Company, LLC and Oak View Group, LLC (collectively, "OVG"); Crown Imports, LLC; Disturbing Tha Peace Entertainment; Electronic Arts; and IMG College, LLC ("IMG"). Accordingly, the university states, and provides documentation showing, it notified these third parties of the request for information and of 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

¹ The university states, and provides documentation demonstrating, it sought and received clarification of the first request for information. *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).

circumstances). We have received comments from IMG and OVG, as well as Live Nation Entertainment, Inc. ("Live Nation").² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Live Nation and OVG seek to withhold information the university did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the university. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from IMG, Live Nation, and OVG explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the information at issue. *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, 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. Therefore, the university may not withhold the information at issue on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we address IMG's assertion that some of the information at issue is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing,

² We note, although Live Nation raises section 552.101 of the Government Code, it makes no argument to support this exception. Therefore, we presume Live Nation has withdrawn its claim this exception applies to the information at issue.

producing, collecting, assembling, or maintaining the information;
or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1).

IMG argues some of the contracts at issue are not "public information" subject to the Act because IMG is not a governmental body subject to the Act and the university is not a party to the contracts at issue. *See id.* § 552.003(1)(A) (defining "governmental body"). We note the information at issue is in the possession of the university, and the university has submitted this information as being subject to the Act. Thus, we find the university collected, assembled, or maintains this information in connection with the transaction of official business. Therefore, the information at issue constitutes public information subject to the Act and may only be withheld if an exception to disclosure under the Act applies.

We note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-24393 (2019). In that ruling, we determined the university must release the information at issue. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007. We also note IMG now seeks to withhold information that was previously ordered released by the prior ruling under section 552.110 of the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address IMG's arguments under this exception for any previously released information.

IMG, Live Nation, and OVG raise subsections 552.110(b) and (c) for portions of the remaining information. 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.” *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). Section 552.110(c) of the Government Code exempts 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). 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).

IMG, Live Nation, and OVG argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find IMG, Live Nation, and OVG have 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).³ However, with respect to the information previously ordered released in Open Records Letter No. 2019-24393, IMG has not disputed this office’s conclusion regarding the release of the information at issue since the issuance of the previous ruling. In this regard, we find IMG has not provided any measures to protect its information in order for this office conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause IMG substantial harm. *See id.* § 552.110. Further, we find some the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). Finally, we find IMG has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold the remaining information under section 552.110 of the Government Code.

Section 552.1101(a) of the Government Code exempts 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[.]*” *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain

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

types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find Live Nation has failed to demonstrate the applicability of section 552.1101(a) to its information. Accordingly, the university may not withhold any of the information at issue under section 552.1101(a).

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/jlbm

Ref: ID# 824325

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

cc: 7 Third Parties
(w/o enclosures)