



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 13, 2020

Ms. Hadassah Schloss  
Director Open Government  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2020-13628

Dear Ms. Schloss:

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# 825193 (GLO ID# 20-0419).

The Texas General Land Office (the "GLO") received a request for information pertaining to a specified request for proposals. Although the GLO takes no position as to whether the submitted information is excepted under the Act, the GLO states release of the submitted information may implicate the proprietary interests of Crowe, L.L.P.; Ernst & Young, L.L.P. ("EY"); and Weaver & Tidwell, L.L.P. ("Weaver"). Accordingly, the GLO states, and provides documentation showing, it notified the third parties of the request for information and of their 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 EY and Weaver. We have reviewed the submitted information and considered the submitted arguments.

Initially, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *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, that 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. Accordingly, the GLO may not withhold the submitted information on the basis of any proprietary interest the remaining third party may have in the information.

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[.]” Gov’t Code § 552.110(c). EY and Weaver argue some of the information at issue consists of commercial or financial information subject to section 552.110(c).<sup>1</sup> Upon review, we find EY and Weaver have demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent EY’s and Weaver’s customer information is not publicly available on their companies’ websites, the GLO must withhold EY’s and Weaver’s customer information, which we have indicated, under section 552.110(c) of the Government Code.<sup>2</sup> However, to the extent it is publicly available on their companies’ websites, we find the GLO may not withhold the customer information under section 552.110(c) of the Government Code. Regardless, the GLO must withhold the information we have marked under section 552.110(c) of the Government Code.<sup>3</sup> However, we find EY and Weaver have 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 GLO 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
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable

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<sup>1</sup> Although EY cites to subsections 552.110(a) and 552.110(b) of the Government Code, we note the Eighty-sixth Legislature amended section 552.110 effective January 1, 2020. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Accordingly, we understand EY to raise subsections 552.110(b) and 552.110(c) for portions of its information.

<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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

through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). EY and Weaver argue some of the information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find EY and Weaver have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the GLO may not withhold any of the remaining information under section 552.110(b) of the Government Code.

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). Weaver asserts disclosure of some of its information would reveal an individual approach to work, staffing, processes, and pricing methodology, and give advantage to a competitor. Upon review, we find Weaver has demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the GLO must withhold the information we have marked under section 552.1101 of the Government Code.

We note some of the materials at issue may 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, to the extent EY's and Weaver's customer information is not publicly available on their companies' websites, the GLO must withhold EY's and Weaver's customer information, which we have indicated, under section 552.110(c) of the Government Code. The GLO must withhold the information we have marked under section 552.110(c) of the Government Code. The GLO must withhold the information we have marked under section 552.1101 of the Government Code. The GLO must release the remaining information; however, any information that is subject to copyright may be released only 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.

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,

Alexandra C. Burks  
Attorney  
Open Records Division

ACB/eb

Ref: ID# 825193

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)