



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2020

Mr. Michael Phelps  
Senior Paralegal  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2020-14726

Dear Mr. Phelps:

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# 831274 (HCAD Internal Ref. No. 20-1843).

The Harris County Appraisal District (the "district") received a request for certain information pertaining to specified accounts. You state release of the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests a vast number of third parties. Accordingly, you state, and provide documentation showing, the district notified the interested third parties 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 Bettencourt Tax Advisors ("Bettencourt"); Duff & Phelps, LLC ("Duff"); DuCharme, McMillen & Associates, Inc. ("DuCharme"); Gary E. Ellison, P.C. ("Ellison"); Huynh & Huynh, PLLC ("Huynh"); John Novotny d/b/a Novotny & Company ("Novotny"); Julie Hsiao ("Hsiao"); Lindley Law Firm, PLLC ("Lindley"); Louis F. Rothermel, II ("Rothermel"); My Home Savings, Inc. d/b/a Home Tax Solution ("Home"); Nationwide Consulting Company, Inc. ("Nationwide"); Property Evaluation Services ("PES"); Protrac, Inc. ("Protrac"); Rainbolt Property Tax Service, LLC ("Rainbolt"); Real Stake, Inc. ("Real Stake"); Resolute Property Tax, LLC ("Resolute"); Shum & Associates ("Shum"); and T.W. Hall & Associates ("T.W.

Hall”).<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Duff argues against the release of information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review.<sup>2</sup> 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) 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 not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties 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 district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Bettencourt, Duff, Novotny, and Rothermel generally raise section 552.101 of the Government Code; however, these third parties have not pointed to any statutory confidentiality provision, nor are we aware of any, that would make the information these third parties seek to withhold confidential for purposes of section 552.101. See, e.g., Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the district may not withhold any of these third parties’ information under section 552.101 of the Government Code.

Duff raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if a governmental body

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<sup>1</sup> We note Home, Shum, and T.W. Hall make no arguments against disclosure of their information at issue and raise no exceptions to disclosure under the Act. In addition, although Ellison raises sections 552.101 and 552.110 of the Government Code, Lindley raises sections 552.110 of the Government Code, Protrac raises sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, and Rainbolt raises section 552.110 of the Government Code, these third parties make no arguments to support these exceptions. Further, although Huynh generally asserts its information is privileged pursuant to the attorney-client and work product privileges, it makes no arguments to support these assertions. Therefore, we do not address these claims. See §§ Gov’t Code 552.301, .302, .305.

<sup>2</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

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). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), 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 Duff’s arguments under section 552.104.

Section 552.110 of the Government Code protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although the district argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district’s argument under section 552.110.

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[.]” *See id.* § 552.110(c). Bettencourt, Duff, DuCharme, Hsiao, Nationwide, Novotny, PES, Real Stake, Resolute, and Rothermel argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Bettencourt, Duff, DuCharme, Hsiao, Nationwide, Novotny, PES, Real Stake, and Resolute have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent these third parties’ client information is not publicly available on their websites, the district must withhold the information we indicated under section 552.110(c) of the Government Code. However, we find Bettencourt, Duff, DuCharme, Hsiao, Nationwide, Novotny, PES, Real Stake, Resolute, and Rothermel 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, district 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* Gov’t Code § 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). Bettencourt, Duff, DuCharme, Hsiao, Nationwide, Novotny, PES, Real Stake, Resolute, and Rothermel argue some of the information at issue consists of trade secrets subject to section 552.110(b). Upon review however, we find Bettencourt, Duff, DuCharme, Hsiao, Nationwide, Novotny, PES, Real Stake, Resolute, and Rothermel have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the district 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:

(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). Duff asserts disclosure of its remaining information would reveal an individual approach to work and give advantage to a competitor. Upon review, we find Duff has failed to provide the specific factual evidence necessary to withhold any of the remaining responsive at issue under section 552.1101(a), and district may not withhold it on that basis.

In summary, to the extent Bettencourt's, Duff's, DuCharme's, Hsiao's, Nationwide's, Novotny's, PES', Real Stake's, and Resolute's client information is not publicly available on their websites, the district must withhold the information we indicated under section 552.110(c) of the Government Code. The district 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,

Pearlie Gault  
Attorney  
Open Records Division

PG/eb

Ref: ID# 831274

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

17 Third Parties  
(w/o enclosures)