



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2020

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

OR2020-15331

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# 829263 (GLO ID# 20-0477).

The Texas General Land Office (the "GLO") received a request for a copy of all proposals and evaluation materials pertaining to a specified bidding situation and the resulting contract. You state the GLO has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing, you notified the interested 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 Ardurra, Freese, and Metric. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Metric argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the GLO has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body

¹ The notified third parties are: Ardurra Group LLC ("Ardurra"); Braun Intertec; Cardno GS, Inc.; Dewberry; Freese & Nichols ("Freese"); ICF Incorporated, LLC; Metric Engineering, Inc. ("Metric"); Neel-Schafer, Inc.; ProSource Technologies, LLC; SWCA Environmental Consultants; Tectonic Engineering Consultants, PC; and Tetra Tech, Inc.

requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the GLO submitted as responsive to the request for information.²

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring provision of specific factual evidence demonstrating applicability of exception). Accordingly, the GLO may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Ardurra and Freese raise section 552.104 of the Government Code for their information. Section 552.104 excepts from disclosure information “if a governmental body 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.” *Id.* § 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 Ardurra's or Freese's arguments under section 552.104.

We also note Ardurra raises section 552.102(a) of the Government Code as an exception to disclosure of portions of its information. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). Section 552.102(a) protects information relating to public officials and employees. *See Open Records Decision No. 345 (1982).* In this instance, the information at issue is related to a private entity, Ardurra. Therefore, the GLO may not withhold Ardurra's information under section 552.102(a).

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].

² As we are able to make this determination, we need not address Metric's arguments against the disclosure of this information.

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). Ardurra, Freese, and Metric argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Ardurra and Metric have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the GLO must withhold the information we marked under section 552.110(c) of the Government Code.³ 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 Ardurra and Freese 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, “[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). As noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Ardurra and Freese argue some of their information consists of trade secrets subject to section 552.110(b). 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(b). Additionally, we find Ardurra and Freese have failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret. Therefore, the GLO 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) 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

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

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.

(b) 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). Ardurra asserts disclosure of some of its information would reveal an individual approach to organizational structure, staffing, internal operations, and processes and give advantage to a competitor. However, we find some of the remaining information at issue pertaining to Ardurra is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* Additionally, we find Ardurra has failed to provide specific factual evidence demonstrating the remaining information at issue is subject to section 552.1101(a). Therefore, the GLO may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that

is collected, assembled, or maintained by or for a governmental body is confidential.”¹ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the GLO must withhold the bank account and ABA routing numbers in the remaining information under section 552.136 of the Government Code.

In summary, the GLO must withhold the information we marked under section 552.110(c) of the Government Code. The GLO must withhold the bank account and ABA routing numbers in the remaining information under section 552.136 of the Government Code. The GLO 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 829263

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).