



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2020

Ms. Julie Pandya Doshier
Counsel for the Ellis County Appraisal District
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2020-15775

Dear Ms. Doshier:

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# 832780 (Ref. No. 114921).

The Ellis County Appraisal District (the "district"), which you represent, received a request for the final contract between the district and a specified third party. Although the district takes 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 True Prodigy Tech Solutions, LLC ("True Prodigy"). Accordingly, you state, and provide documentation showing, the district notified True Prodigy 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 True Prodigy. We have reviewed the submitted arguments and the submitted information.

True Prodigy 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 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 True Prodigy's arguments under section 552.104.

True Prodigy argues some of its information is excepted from disclosure under section 552.110 of the Government Code.¹ Section 552.110(c) of the Government Code states:

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].

See 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). True Prodigy argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find True Prodigy has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked under section 552.110(c) of the Government Code.² 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 True Prodigy 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 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, “[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

¹ Although True Prodigy cites to sections 552.110(a) and 552.110(b) of the Government Code, we understand it to raise sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

² As our ruling is dispositive, we need not address the remaining argument 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). 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). True Prodigy argues some of its remaining information at issue constitutes trade secrets subject to section 552.110(b). Upon review, 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 True Prodigy 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 district may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the district must withhold the information we marked 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 832780

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)