



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2020

Mr. Matt Shovlin
Assistant District Attorney
Denton County
P.O. Box 2344
Denton, Texas 76202

OR2020-16445

Dear Mr. Shovlin:

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# 833331 (PIR# 20-142).

Denton County (the "county") received a request for: (1) the most recent request for proposals for specified services, including associated responses; (2) the current contract and any amendments for specified services, including four points of information; and (3) reports, invoices, and statements during a specified time period, including six points of information. The county indicates it released some information to the requestor. The county claims the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ Additionally, the county states release of the submitted information may implicate the proprietary interests of the following third parties: Aramark Correctional Services, LLC; Five Star Correctional Services, Inc. ("Five Star"); Summit Food Service, LLC; and Trinity Services Group, Inc. ("Trinity"). Accordingly, the county states, and provides documentation showing, it notified these interested 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 circumstances). We have received comments from Five Star and Trinity. We have considered the submitted arguments and reviewed the submitted information.

¹ Although the county also raises sections 552.111 and 552.153 of the Government Code, it provides no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume the county no longer asserts these exceptions. *See* Gov't Code §§ 552.301, .302.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Five Star and Trinity 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 submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the county may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

We understand the county and Five Star to assert the information at issue was supplied with the expectation of confidentiality under county's procurement policies. We note information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, the county must release it, notwithstanding any expectations or agreement specifying otherwise.

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* Gov't Code § 552.110(b)-(c). Although the county 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 county's argument under section 552.110.

Five Star and Trinity raise section 552.110(c) of the Government Code for portions of their information.² 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[.]” *Id.* § 552.110(c). Five Star and Trinity argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Trinity has demonstrated its information and Five Star has demonstrated portions of its information, including its client reference information, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we marked and, to the extent it is not publicly available on Five Star's website, the client

² Although Trinity cites to former section 552.110(b) of the Government Code in its brief, we understand it to raise current section 552.110(c) of the Government Code based on the substance of its arguments.

reference information we marked under section 552.110(c) of the Government Code.³ However, we find Five Star 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 county 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 through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Five Star argues some of its remaining information consists of trade secrets subject to section 552.110(b). To the extent the client reference information for Five Star is publicly available on its website and not excepted from disclosure under section 552.110(c), the county may not withhold such information under section 552.110(b). Additionally, upon review, we find Five Star 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 county 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;

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

(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). Five Star asserts disclosure of some of its remaining information would reveal an individual approach to work, operations, and processes and give advantage to a competitor. Upon review, we find Five Star has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the county must withhold the information we marked under section 552.1101 of the Government Code. However, we find Five Star has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the county may not withhold it on that basis.

The county asserts the remaining information is confidential under section 552.101 of the Government Code in conjunction with section 262.030(c) of the Local Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information made confidential by other statutes. Section 262.030(c) of the Local Government Code provides a competitive proposal procedure for the purchase of high technology items by a county, and states, in pertinent part:

If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

Local Gov’t Code § 262.030(c). In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of section 262.030(c) does not expressly make bid proposals confidential. Accordingly, we determine the information at issue is not confidential pursuant to section 262.030(c). Thus, the county may not withhold any portion of the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 262.030 of the Local Government Code.

We note some of the remaining information 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, the county must withhold the information we marked and, to the extent it is not publicly available on Five Star's website, the client reference information we marked under section 552.110(c) of the Government Code. The county must withhold the information we marked under section 552.1101 of the Government Code. The county must release the remaining information; however, any information subject to copyright may only be released 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/rm

Ref: ID# 833331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 4 Third Parties
(w/o enclosures)