



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2020

Ms. Emily Ainsworth Howell  
Assistant General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2020-16603

Dear Ms. Howell:

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# 833708.

Texas A&M University (the "university") received a request for the proposal submitted by Lockwood, Andrews & Newman, Inc. ("LAN") in response to request for qualifications #20-001, Comprehensive Facilities Condition Analysis. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of LAN. Accordingly, you state, and provide documentation showing, you notified LAN 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 LAN. We have considered the submitted arguments and reviewed the submitted information.

LAN 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 LAN's arguments under section 552.104.

LAN also raises section 552.110 of the Government Code for some of its information.<sup>1</sup> 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). LAN argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find LAN has failed to provide specific factual evidence demonstrating any portion of the submitted information at issue is a trade secret. Therefore, the university may not withhold any of the submitted information at issue under section 552.110(b) of the Government Code.

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). LAN argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find LAN has failed to provide specific factual evidence demonstrating the submitted information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the submitted information at issue under section 552.110(c) of the Government Code.

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<sup>1</sup> Although LAN 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 LAN to raise subsections 552.110(b) and 552.110(c) for portions of its information.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 states that “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the university must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The university 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 833708

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).